Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,
*Appellee.*

On Appeal from the Supreme Court of the State of Utah

# JURISDICTIONAL STATEMENT

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IN THE

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No.....

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THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,
*Appellee.*

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On Appeal from the Supreme Court of the State of Utah

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# JURISDICTIONAL STATEMENT

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## OPINION BELOW

The opinion of the Supreme Court of the State of Utah is reported at 517 P.2d 1010 (1974) and is set forth in the appendix, infra, pages 5a through 11a. It has not been published in the official Utah Reports.

## JURISDICTION

Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1257(2), this being an appeal which draws into question the validity of 15-2-1 Utah Code Annotated 1953 infra, page 3, on the ground that it is repugnant to the Constitution of the United States. Jurisdiction of this court is sustained by *Charleston Federal Savings and Loan Association v. Alderson*, 324 U.S. 182 (1946); and *Cohen v. California*, 403 U.S. 15 (1971).

Appellant sought a judgment for past-due support money for her daughter, which had accrued pursuant to a divorce decree. The judgment was refused by the trial court in an order dated June 13, 1973, on the ground that under 15-2-1 Utah Code Annotated 1953, the daughter attained her majority when she became 18 years of age, and that the obligation of the appellee to pay support money for her ended.

On appeal to the Utah Supreme Court, the order denying judgment was affirmed on January 4, 1974, and a timely petition for rehearing was denied on January 30, 1974. A timely notice of appeal to this court was filed in the District Court of Salt Lake County, State of Utah, on March 5, 1974, infra p. 12a.

The Supreme Court of the State of Utah explicitly rejected appellant's Fourteenth Amendment challenge to 15-2-1 Utah Code Annotated 1953, and this matter is therefore appropriately brought to this court by appeal.

In the event that the court does not consider appeal the proper mode of review, appellant requests that the



papers whereupon this appeal is taken be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. §2103.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States.

Also involved is 15-2-1 Utah Code Annotated 1953 (Utah Code Replacement Volume 2A, page 475) which provides:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

## QUESTION PRESENTED

Whether fixing a different period of minority for males than for females violates the due process and equal protection clauses of the Fourteenth Amendment.

## STATEMENT

Appellant and appellee were once husband and wife. On November 29, 1960, a decree of divorce was entered which contained the following provision:

> Defendant [appellee] is ordered to pay to plaintiff [appellant] the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support and

> $100.00 per month as alimony, to be paid on or before the first day of each month through the office of the Salt Lake County Clerk.

The parties have two children, a daughter born February 12, 1953, and a son born January 29, 1955. The daughter became 18 years of age on February 22, 1971, whereupon appellee ceased making payments for her support.

On May 22, 1973, appellant filed a motion for entry of judgment against appellee in the amount of $3,000.00, including $2,700.00 for the support of her daughter, which sum had accrued after she became 18 years of age.

After argument of the motion, the trial court on June 13, 1973, entered findings of fact, conclusions of law, and an order denying appellant's motion. The order is set forth infra, p. 1a.

(The order also related to other matters, including support money due for the parties' son, and payment of medical bills and attorney's fees. These matters, however, are not involved in this appeal.)

## HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Appellant's Motion for Judgment was argued orally, without written briefs. Appellant contended that if 15-2-1 Utah Code Annotated 1953 were applied in such a manner as to deprive her of support money for an 18 year old daughter, but to permit other parties similarly situated to obtain support for 18 year old sons,



the statute was invalid because in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

The trial court resolved the question in Conclusion No. 1 of its Amended Findings of Fact and Conclusions of Law entered on June 13, 1973, wherein it stated:

> On February 12, 1971, Sherri Lyn Stanton, one of the children of the parties, became 18 years of age, and under the provisions of 15-2-1 Utah Code Annotated 1953, thereby attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn Stanton since that date.

On the same date the court entered its order denying appellant's motion for judgment.

Appellant appealed the order to the Utah Supreme Court and again raised the federal constitutional question. Point II of appellant's brief to that court stated:

> As applied by the trial court, 15-2-1 Utah Code Annotated 1953 violates Amendment Fourteen, United States Constitution, and Article I, Section 7 and 24, Utah Constitution.

Under this Point II, the appellant urged the following:

> The United States Supreme Court and the Courts of Appeal recently have had occasion to consider the equal protection and due process clauses in relation to statutory classifications based on sex.

After citing *Reed v. Reed*, 404 U.S. 71 (1971), *Frontiero v. Richardson*, 411 U.S. 677 (1973), and

decisions by United States Courts of Appeal, the brief said:

> We are unable to conceive any rational basis for the legislative discrimination between the sexes in 15-2-1 Utah Code Annotated 1953. The statute, first enacted prior to adoption of the Fourteenth Amendment, has a number of implications with respect to the contractual capacities of men and women, but the application with which we are concerned is the one which would deny support and maintenance to the mother of an 18 year old daughter while giving it to an otherwise identically situated mother of an 18 year old son.

The Utah Supreme Court unanimously and expressly rejected appellant's contention. After quoting the provisions of 15-2-1 Utah Code Annotated 1953, the court said:

> She contends that making the age of majority lower for women than for men is discriminatory, and denies equal protection of the laws.[1]
>
> " * * * in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect to the prerogatives of the legislature; and not strike down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict [with the constitution]. * * *
>
> * * * it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitutional provisions that it should be stricken down as invalid * * * .

1. Utah Constitution, Article I, Section 7 and 24; and Article IV. Section 1; and also U.S. Constitution, Amendment Fourteen.



## THE FEDERAL QUESTIONS ARE SUBSTANTIAL

As applied by the Utah Supreme Court, Utah's "age of majority" statute deprives one mother of the right to child support while giving it to others in identical circumstances—except for the sex of their children. But the right to support is not the only question. The decision affects males and females differently with respect to many rights and privileges, e.g., the right to contract (15-2-2 Utah Code Annotated 1953); the right to purchase alcoholic beverages (32-7-15 Utah Code Annotated 1953); exemption of earnings from execution (78-23-1[12] Utah Code Annotated 1953); and access to the courts (Rule 17[b], Utah Rules of Civil Procedure).

Moreover, the decision portends additional inroads of federal constitutional rights because of the holding that a statute will not be declared unconstitutional unless it is in conflict with constitutional provisions "beyond a reasonable doubt."

The Utah Supreme Court simply ignored the principle announced by this court in *Reed v. Reed*, 404 U.S. 71 (1971) and *Frontiero v. Richardson*, 411 U.S. 677 (1973).

In *Reed* this court had before it an Idaho probate statute providing that "males must be preferred to females", in issuance of letters of administration. The Idaho Supreme Court having held that the statutory preference given to males was mandatory, this court reversed on the ground that the distinction between men and women was an "invidious discrimination".

With respect to the equal protection clause, the court said:

> In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. * * * The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced will be treated alike." Royster Guano Co. v. Virginia, 253 U.S. 412 (1920). The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to state objective that is sought to be advanced by the operation of §§15-312 and 15-314.

In upholding the latter section, the Idaho Supreme Court concluded that its objective was to eliminate one area of controversy when two or more persons, equally entitled under §15-312, seek letters of administration and thereby present the probate court "with the issue of which one should be named." The court also concluded that where such persons are not of the same sex, the elimination of females from consideration "is neither an illogical nor arbitrary method devised by the legislature to resolve an issue that would otherwise require a hearing as to the relative merits . . . of the two or more petitioning relatives . . . " 93 Idaho, at 514, 564 P.2d at 638.

* * * The objective of §15-312 clearly is to establish degrees of entitlement of various classes



> of persons in accordance with their varying degrees and kinds of relationship to the intestate. Regardless of their sex, persons within any of the enumerated classes of that section are similarly situated with respect to that objective. By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause. Royster Guano Co. v. Virginia, supra.

Subsequently, in *Frontiero* this court held unconstitutional a federal statutory provision under which a serviceman was allowed to claim his wife as a dependent without regard to whether she was in fact dependent upon him, while a servicewoman could not claim her husband as a dependent unless he was in fact dependent upon her for over one-half of his support.

Speaking for four members of the court, Mr. Justice Brennan said:

> Although the legislative history of these statutes sheds virtually no light on the purposes underlying the differential treatment accorded male and female members, a majority of the three judge District Court surmised that congress might reasonably have concluded that, since the husband in our society is generally the "breadwinner" in the family and the wife typically the "dependent" partner—"it would be more economical to require married female members claiming husbands to prove actual dependency than to extend the presumption of dependency to such members." 341 F.Supp., at 207. Indeed, given the fact that approximately 99% of all members of the uniformed services are male, the District Court speculated that such differential treatment might conceivably lead to a "considerable saving of administrative expense and manpower." *Ibid.*

> * * * We can only conclude that classifications based upon sex, like classifications based upon race, alienage, or national origin, are inherently suspect, and must therefore be subjected to strict judicial scrutiny. Applying the analysis mandated by that stricter standard of review, it is clear that the statutory scheme now before us is constitutionally invalid."

Four other members of the court concurred in the decision in *Frontiero,* three on the ground that under the decision in *Reed* the petitioner was not accorded due process of law, and one on the ground that the statutes worked an "invidious discrimination."

The Utah Supreme Court not only refused to expose the questioned statute to judicial scrutiny; it did not even pay lip service to the requirement that the classification must have a fair and substantial relation to the object of the legislation. The court made no attempt to distinguish *Reed* or *Frontiero;* indeed, although the two cases were the primary bases for the appeal, the Utah Supreme Court did not cite either of them. The court not only refused to strike down an unconstitutional classification, but ignored the supremacy clause of Article VI, Constitution of the United States, by applying a constitutional test of its own making.

In upholding the constitutionality of 15-2-1 Utah Code Annotated 1953, the Utah Supreme Court said:

> "In considering plaintiff's charge that the statute just quoted is unconstitutional there are some general principles to be applied. Due to the important concept of separation of powers in our government, the court should defer to the prerogatives of the legislature to make the laws, and confine their own actions to interpreting and



> applying them. This, of course, does not negate their responsibility of determining an act to be invalid if there is a clear and irreconcilable conflict between it and the Constitution, which is the supreme and controlling law. But the courts are in a peculiar and somewhat delicate position because it falls to their lot to decide whether such conflict exists, and there is always the danger of trespassing upon the legislative domain. For this reason, and in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect for the action of the legislature; and not strike down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict.
>
> * * *
>
> There is no doubt that the questioned statute treats men and women differently. But there is likewise no question that it may treat people differently, based on classification, so long as there is a reasonable basis for the classification, which is related to the purposes of the act, and it applies equally and uniformly to all persons within the class. The plaintiff's argument is that, notwithstanding the foregoing, there is no sound reason for differentiation between the sexes as to the termination of the right of support. She asserts that whatever basis there may have been in former days for continuing the support of boys for the extra three years, because of the liberalization process in which women have become more involved in all affairs of the world outside the home, that basis no longer exists.
>
> * * *
>
> It may be that our ancestors for generations before us have been misguided in their belief that there are some fundamental differences between the sexes. But it is remarkable how some

of those old notions do continue to prevail as to numerous interesting differences. Included among them is the belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family, and that however many exceptions and whatever necessary improper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities.

Perhaps more important than this, there is another widely accepted idea: that girls tend generally to mature physically, emotionally and mentally before boys and that they generally tend to marry earlier.

* * *

On the basis of what has been said above we make these observations: that there are various factors which should be considered in formulating the policy of the law as to when the duty to support children should terminate; that the opposing contention with respect to the merits of plaintiff's proposal are matters upon which reasonable minds might entertain different opinions; that due to those facts, combined with the long existence and application of this statute in harmony with our constitutional provisions, it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitutional provisions that it should be stricken down as invalid.

Like the three judge district court in *Frontiero*, the Utah Supreme Court "surmised" what the Utah legislature might reasonably have concluded, there being no legislative history to shed light on the purpose underlying the differential treatment accorded to males and females.



The statute antedates Utah statehood and has not been modified since 1888; but subsequent legislation negates the Utah Supreme Court's surmises as to the legislature's ideas about males and females. The Utah Public Assistance Act provides for public assistance to "children under the age of 21" (55-15a-17 Utah Code Annotated 1953); the Utah Uniform Civil Liability for Support Act requires men and women to support their children, and defines child as "a son or daughter under the age of 21 years" (78-45-2 Utah Code Annotated 1953); the Utah Uniform Gift to Minors Act defines a minor as a person "who has not attained the age of 21 years" (75-15-2[11] Utah Code Annotated 1953); tobacco may not be sold to or purchased or possessed by minors of either sex under the age of 19 years (76-42-4 and 76-42-5 Utah Code Annotated 1953); motor vehicle operators licenses are issued to minors of either sex under the same circumstances (41-2-10 Utah Code Annotated 1953); and persons of either sex may vote upon reaching the age of 18 years (20-1-17 Utah Code Annotated 1953).

The decision of the Utah Supreme Court is in conflict with decisions of the United States Courts of Appeal relating to the constitutionality of classifications based on sex. See *Moritz v. Commissioner of Internal Revenue*, 469 F.2d 466 (10 Cir. 1972), which held invalid a classification based on sex and marriage status for purposes of tax deductions; *LaFleur v. Cleveland Board of Education*, 465 F.2d 1184 (6 Cir. 1972), which held unconstittuional a state statute requiring a pregnant teacher to take unpaid leave for a prescribed period; *Wark v. Robbins*, 358 F.2d 1295, (1 Cir. 1972),

which held unconstitutional a state statute fixing dfferent sentences for escape by male and female felons.

## CONCLUSION

This case presents substantial federal questions relating to the interpretation and application of the due process and equal protection clauses of the Fourteenth Amendment and the supremacy clause of Article VI of the United States Constitution. Probable jurisdiction should be noted, and the case should be given plenary consideration, with briefs on the merits and oral argument, for resolution of those questions.

Respectfully submitted,

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## APPENDIX A

## IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

| | | |
|---|---|---|
| THELMA B. STANTON, | *Plaintiff*, | ORDER |
| v. | | |
| JAMES LAWRENCE STANTON, JR., | *Defendant*. | Civil No. 125233 |

The plaintiff's Motion for Judgment in her favor and against defendant in the sum of $3,000 plus costs and reasonable attorney fees, and for an order that defendant shall indemnify plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital and pharmaceutical bills arising out of an accidental injury suffered by the parties' daughter, Sherri Lyn, came on regularly for hearing before the Honorable James S. Sawaya, one of the judges of the above entitled court on May 31, 1973, plaintiff appearing in person and by and through her attorney Bryce E. Roe of the firm of Roe and Fowler, and defendant appearing in person and by and through his attorney D. Gary Christian of the firm of Kipp and Christian, and the court having reviewed plaintiff's Motion and Affidavit and having reviewed defendant's Affidavit and having heard the statements and arguments of counsel, and being fully advised in the premises, the court heretofore having made and entered its Findings of Fact and Conclusions of Law, now, therefore, upon the motion of D. Gary Christian,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREE** that plaintiff's Motion for Judgment against defendant for the sum of $3,000 and for costs and reasonable attorney's fees and for an order that defendant shall indemnify plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital and pharmaceutical bills arising out of an accidental injury suffered by the parties' daughter, Sherri Lyn, be and the same is hereby denied.

DATED this 13th day of June, 1973.

BY THE COURT:
/s/JAMES S. SAWAYA
District Judge



## APPENDIX B

## IN THE SUPREME COURT OF THE STATE OF UTAH

Regular October Term, 1973

Thelma B. Stanton,
*Plaintiff and Appellant,*

v.

James Lawrence Stanton,
*Defendant and Respondent.*

January 4, 1974

REMITTITUR
No. 13362
Dist. No. 125233

This cause having been heretofore argued and submitted, and the Court being sufficiently advised in the premises, it is now ordered, adjudged and decreed that the judgment of the District Court herein be, upon the basis of the decree, and the record before us, the plaintiff is entitled to judgment for the $300 accrued support money for the son Rick, and to a continuance thereof during his minority unless otherwise properly determined and ordered by the District Court; except as to this last item, the judgment is affirmed. The parties to bear their own costs.

Regular October Term, 1973 January 30, 1974

### (UPON PETITION FOR REHEARING)

Upon consideration of the petition for rehearing heretofore filed herein, and the arguments of counsel

thereupon had, it is ordered that the rehearing be, and the same is, denied.

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Issued January 30, 1974.

Record:
One Volume



## APPENDIX C

## IN THE SUPREME COURT OF THE STATE OF UTAH

Jan. 4, 1974

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THELMA B. STANTON,
*Plaintiff and Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,
*Defendant and Respondent.*

No. 13362
Civil No. 125233

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CROCKETT, Justice:

The main issue presented on this appeal is plaintiff's attack on the constitutionality of Section 15-2-1, U.C.A. 1953:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

She contends that making the age of majority lower for women than for men is discriminatory, and denies equal protection of the laws.[1]

After nine years of marriage and the birth of two children, Sherri, born February 12, 1953, and Rick, born January 29, 1955, the parties were divorced and the decree required the defendant to pay $100 per month alimony and $100 per month for the support of each

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1. Utah constitution, Art. I, Secs. 7 and 24; and Art IV, Sec. 1; and also U. S. Constitution, Amend. XIV.

child. It is not disputed that he made these payments until February 1971, at which time he ceased paying for Sherri because she had reached the age of 18. In supplemental proceedings the plaintiff sought judgment for support payments for Sherri accruing since that time. From an adverse ruling, she appeals. The trial court ruled in accordance with the assumption since time immemorial in our law that our statutes dealing with the support of "children" meant during the period of minority[2] and denied her petition. She appeals.

In considering plaintiff's charge that the statute just quoted is unconstitutional there are some general principles to be applied. Due to the important concept of separation of powers in our government, the courts should defer to the prerogative of the legislature to make the laws, and confine their own actions to interpreting and applying them. This, of course, does not negate their responsibility of determining an act to be invalid if there is a clear and irreconcilable conflict between it and the Constitution, which is the supreme and controlling law.[3] But the courts are in a peculiar and somewhat delicate position because it falls to their lot to decide whether such conflict exists, and there is always the danger of trespassing upon the legislative domain. For this reason, and in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect for the action of the legislature; and not strike

2. See Secs. 30-3-5, U.C.A.1953, support and custody of children in divorce cases; 30-2-10, cases of abandonment; 30-3-10, cases of separation; and 30-4-3, separate maintenance.
3. See Allen v. Rampton, 23 Utah 2d 336, 463 P.2d 7, and authorities therein cited.



down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict.[4]

It is also worthy of mentiion that this should be more true as to acts of a state legislature, which acts as representatives of a sovereign state, and thus has inherently all of the powers of sovereignty, except as otherwise specified or limited by the state constitution, as contrasted to the federal government which has only those powers expressly granted, with all others reserved to the people. See the language of Amendments IX and X, U. S. Constitution.

There is no doubt that the questioned statute treats men and women differently. But there is likewise no question but it may treat people differently based on classification, so long as there is a reasonable basis for the classification, which is related to the purposes of the act and it applies equally and uniformly to all persons within the class.[5] The plaintiff's argument is that, notwithstanding the foregoing, there is no sound reason for differentiation between the sexes as to the termination of the right of support. She asserts that whatever basis there may have been in former days for continuing the support of boys for the extra three years, because of the liberalization process in which women have become more involved in all affairs of the world outside the home, that basis no longer exists.

We are aware that both society in general and interfamily relationships have been undergoing change, as

4. Newcomb v. Ogden City Pub. School Teachers' Retirement Commission, 121 Utah 503, 243 P.2d 941 (1952).
5. State v. Mason, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330; Slater v. Salt Lake City, 115 Utah 476, 206 P.2d 153, 9 A.L.R. 2d 712.

they undoubtedly should. We do not desire to be understood as opposing change simply because it is different; and we wholly agree that an essential aspect of the vitality of the law is that it should change to meet changing conditions. But neither of those propositions provide the answer to the problem here.

It may be that our ancestors for generations before us have been misguided in their belief that there are some fundamental differences between the sexes. But it is remarkable how some of those old notions do continue to prevail as to numerous interesting differences. Included among them is the belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family; and that however many exceptions and whatever necessary and proper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities.

Perhaps more important than this, there is another widely accepted idea: that girls tend generally to mature physically, emotionally and mentally before boys, and that they generally tend to marry earlier.[6] We realize that as a court made up of men, there is a possibility of masculine bias, which we should endeavor to guard against in considering matters of this character. But we do not regard it as our judicial function to pass upon the soundness or unsoundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential

6. See a good statement on this by Justice Dailey in Jacobsen v. Lenhart, 30 Ill.2d 225, 195 N.E.2d 638.



role in the history of the development of the law as declared in the statute under attack.

Should it be deemed the prerogative of the court to initiate a change in the age at which the parental duty of support terminates, it would be appropriate to reflect upon another aspect of the problem: that is, how would the shoe fit on the other foot? Assume that we would take judicial cognizance of the trend in the differing role of women, perhaps we should similarly notice the trend toward the earlier emancipation and fuller freedom of conduct of minors; and that this applies to both boys and girls. One indication of this is the recent reduction of the age for voting to 18.[7] From this it could be argued with equal logic that instead of extending the defendant's duty of supporting Sherri to 21, he should be relieved of the duty of supporting the son Rick (age 16) when he reaches 18. Thus in a contest between the plaintiff and the defendant as to the support of these children, there would be a net loss to the plaintiff.

On the basis of what has been said above we make these observations: that there are various factors which should be considered in formulating the policy of the law as to when the duty to support children should terminate; that the opposing contentions with respect to the merits of plaintiff's proposal are matters upon which reasonable minds might entertain different opinions; that due to those facts, combined with the long existence and application of this statute in harmony with our constitutional provisions, it is our judgment

7. See 20-2-11.1 U.C.A.1953; and Federal Voting Rights Act Amendments of 1970, Public Law 91-295.

that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitutional provisions that it should be striken down as invalid.

We think this case and the proposal under consideration provide a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature.[8] Then the proposal would be subject to public scrutiny and debate, and action be taken thereon by the representatives of the people, rather than to have a change result from a controversy between private individuals. There is the further advantage that if such a change is made legislatively, everyone could know the time, the manner and the extent of the change; and the legislature in the exercise of its wisdom and prerogative, could also provide how the new law would affect the thousands of divorce decrees already entered and under which such problems might arise, including the possible ex post facto, current, and prospective effects.

[6] There is an adjunctive minor issue in this case: defendant contends that the son Rick lived with him for about three months and that he is therefore entitled to a credit of $300 for Rick's support during that time. The general rule is that the decree fixes the obligations of the parties; and that they cannot modify it or change

8. That majority or minority is a status and that is the prerogative of the legislature to fix and change the age of majority. see in re Morrissey. 137 U.S. 157, 11 S.Ct. 57, 34 L.Ed. 644; and Springstun v. Springstun, 131 Wash. 109, 229 P. 14, 40 A.L.R. 595; 27 Am. Jur. 748, Sec. 5.



their obligations by their conduct.[9] Otherwise sometimes interfamily tensions and machinations could make a shambles of determining and enforcing the rights and duties of the parties.

In the absence of any modification of the decree, the support money accrued in accordance with its terms; and it was not the prerogative of the defendant to unilaterally decide that he would not pay the support money and offset it by favors conferred upon the children. However, in matters concerning the custody and support of children, because of their highly equitable nature, it is appropriate for the trial court to take into consideration the entire circumstances in making any order of enforcement of the decree, by contempt or otherwise, having in mind his equitable powers, to make any adjustment he may think fair and justified.

[9] Nevertheless, upon the basis of the decree, and the record before us, the plaintiff is entitled to judgment for the $300 accrued support money for the son Rick, and to a continuance thereof during his minority unless otherwise properly determined and ordered by the district court. Except as to this last item, the judgment is affirmed. The parties to bear their own costs.

CALLISTER, C. J., TUCKETT and HENRIOD, JJ., and JOSEPH E. NELSON, District Judge, concur.

ELLETT, J., having disqualified himself, does not participate herein.

9. See Harris v. Harris, 14 Utah 2d 96, 377 P.2d 1007, Marks v. Marks, 98 Utah 400, 100 P.2d 207.

## APPENDIX D

## IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

---

THELMA B. STANTON,
*Appellant,*
v.
JAMES LAWRENCE STANTON, JR.,
*Appellee.*

Civil No. 125233

---

## NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Thelma B. Wasescha, formerly known as Thelma B. Stanton, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Utah filed January 4, 1974, affirming an order of the District Court of Salt Lake County entered herein on June 13, 1973, insofar as it denied plaintiff judgment for accrued support money for the party's daughter, Sherri Lyn Stanton.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

DATED this 5th day of March, 1974.

/s/ Bryce E. Roe and
William G. Fowler
340 East Fourth South
Salt Lake City, Utah 84111
Attorneys for Appellant

Supreme Court, U. S.
FILED
DEC 6 1974

# APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

## No. 73-1461

THELMA B. STANTON,

*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,

*Appellee,*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

**APPEAL FILED MARCH 5, 1974**
**PROBABLE JURISDICTION NOTED OCTOBER 21, 1974**

# APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

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## No. 73-1461

---

THELMA B. STANTON,

*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,

*Appellee,*

---

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

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**APPEAL FILED MARCH 5, 1974**
**PROBABLE JURISDICTION NOTED OCTOBER 21, 1974**

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## RELEVANT DOCKET ENTRIES IN THE PROCEEDINGS BELOW

April 14, 1960 — Complaint of Thelma B. Stanton filed in District Court of Salt Lake County, Utah.

November 29, 1960 — Answer of James Lawrence Stanton, Jr., filed.

November 29, 1960 — Stipulation with respect to attorney's fees, property settlement, alimony, and support money filed.

November 29, 1960 — Findings of Fact, Conclusions of Law, and Decree of Divorce filed.

May 22, 1973 — Notice of Motion for judgment for past due support money, with supporting affidavit of plaintiff, filed.

May 29, 1973 — Defendant's Petition for Modification of Decree of Divorce, with supporting affidavit of defendant, filed.

May 29, 1973 — Defendant's Interrogatories to Plaintiff filed.

June 7, 1973 — Findings of Fact, Conclusions of Law, and Order denying plaintiff's motion for judgment for past due support money filed.

June 13, 1973 — Notice of Motion to Amend Findings of Fact, Conclusions of Law and Order filed.

June 13, 1973 — Amended Findings of Fact, Conclusions of Law, and Order denying judgment for past due support money filed.

June 18, 1973 — Plaintiff's Answers to Interrogatories filed.

June 22, 1973 — Notice of Appeal to Supreme Court of the State of Utah filed.

January 4, 1974 — Decision of Supreme Court of State of Utah filed.

January 30, 1974 — Plaintiff's Petition for Rehearing denied.

January 30, 1974 — Remittitur issued by Supreme Court of the State of Utah.

February 4, 1974 — Remittitur filed in District Court of Salt Lake County, Utah.

March 5, 1974 — Notice of Appeal to the Supreme Court of the United States filed.

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## DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

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THELMA B. STANTON,
*Plaintiff,*
vs.
JAMES LAWRENCE STANTON, JR.,
*Defendant.*

Findings of Fact and Conclusions of Law
No. 125233

This matter came on regularly for hearing the 29th day of November, 1960, before the Honorable A. H. Ellett, the plaintiff appearing personally and by counsel, Sumner J. Hatch, and the defendant appearing by counsel, Wayne Ashworth; the defendant's answer



having been withdrawn and his default entered, testimony having been adduced for and on behalf of the plaintiff, the stipulation as to property, child support and alimony having been entered and made a part of the record, the court being fully advised in the matter now makes the following

## FINDINGS OF FACT

1. For more than three months immediately preceding commencement of this action, plaintiff and defendant have been and now are actual and bona fide residents of Salt Lake County, State of Utah.

2. The parties were married at Elko, Nevada, on the 22nd day of February, 1951.

3. There are two children the issue of the marriage, to wit, Sherri Lyn, aged seven years, and Rick Arlund, aged five years, who are now in the care and custody of their mother who is a fit and proper person to be awarded such care and custody, with full rights of visitation in the defendant, their father.

4. Defendant has treated the plaintiff cruelly causing her great mental distress and physical discomfort, more particularly as follows: During the last three months the parties lived together, the defendant continually bickered and argued with the plaintiff and failed to come home nights, admitted going out with other women, stated that plaintiff should get a divorce and that he no longer loved her.

5. The parties should be granted property settlement as set forth in the stipulation.

6. The plaintiff should be granted the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support and $100.00 per month as alimony.

7. The defendant should be required to keep in force life insurance now possessed by him with the two children as joint beneficiaries and, further, to keep in force such medical and hospitalization insurance on the children as he now has.

8. Defendant should pay for and on behalf of plaintiff the sum of $100.00 as attorney's fees, in addition to such fees as have been paid.

The court having made the above Findings of Fact, now concludes as

## CONCLUSIONS OF LAW

1. The plaintiff is entitled to a divorce.

2. Plaintiff should be awarded care and custody of the two children, Sherri Lyn and Rick Arlund, with full rights of visitation in the defendant.

3. The parties should be awarded property as set forth in the stipulation, and defendant required to pay the bills and obligations accumulated prior to their separation with the exception of the payments on the Austin Healy Sprite automobile, which payments plaintiff should provide.

4. Plaintiff is entitled to the sum of $300.00 per month child support and alimony, $100.00 per month for each child as child support and $100.00 per month as alimony, to be paid on or before the 1st day of each



month through the office of the Salt Lake County Clerk.

Dated this 29th day of November, 1960.

By the court:

/s/ A. H. Ellett,

Judge

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## DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

---

THELMA B. STANTON,
Plaintiff,
vs.
JAMES LAWRENCE STANTON, JR.,
*Defendant.*

Decree Of Divorce
No. 125233

This matter came on regularly for hearing on the 29th day of November, 1960, before the Honorable A. H. Ellett, the plaintiff appearing personally and by counsel, Sumner J. Hatch, and the defendant appearing by counsel, Wayne Ashworth; the defendant's answer having been withdrawn and his default entered, testimony having been adduced for and on behalf of the plaintiff, the stipulation as to property, child support and alimony having been entered and made a part of the record, the court being fully advised in the matter and having heretofore made and entered its Findings of Fact and Conclusions of Law;

NOW, THEREFORE, on motion of Sumner J. Hatch, attorney for plaintiff, it is ORDERED, ADJUDGED and DECREED:

1. The contract of marriage existing between plaintiff and defendant be, and the same is hereby, dissolved and held for naught, and the said parties divorced from one another; provided that this decree and the said divorce shall not become final until the same shall become absolute and final without further order or further decree therefor, unless prior to said time the court on its own motion or upon the motion of any other person, whether interested or not, otherwise orders.

2. Plaintiff is awarded care and custody of the two minor children, to wit, Sheri Lyn, aged seven years, and Rick Arlund, aged five years, subject to reasonable rights of visitation in the defendant.

3. The parties are awarded property as set forth in the stipulation.

4. Defendant is ordered to pay the bills and obligations accumulated prior to their separation with the exception of the payments on the Austin Healy Sprite automobile, which is to be assumed by plaintiff.

5. Defendant is ordered to pay to plaintiff the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support and $100.00 per month as alimony, to be paid on or before the 1st day of each month through the office of the Salt Lake County Clerk.

Dated this 29th day of November, 1960.

By the court:

/s/ A. H. Ellett,

Judge



## DISTRICT COURT OF SALT LAKE COUNTY STATE OF UTAH

[Title Omitted In Printing]

## NOTICE OF MOTION

TO: D. Gary Christian, Esq.
Kipp and Christian
Boston Building
Salt Lake City, Utah 84111
Attorney for Defendant

Please take notice that on Thursday, May 31, 1973, at the hour of 11:00 o'clock a.m., before Honorable James S. Sawaya, plaintiff in the above entitled action will move the court as follows:

1. For entry of judgment in favor of the plaintiff and against the defendant in the amount of Three Thousand Dollars ($3,000.00) interest, costs and a reasonable attorney's fee to be fixed by the court.

2. For entry of an order that the defendant shall indemnify the plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital, and pharmaceutical bills, arising out of the accidental injury suffered by the parties' daughter, Sherri Lyn, on or about February 25, 1973.

In support of the motion the plaintiff shows the court that on or about November 29, 1960, this court entered a decree herein, one of the provisions of which was that the defendant was to pay to the plaintiff the sum of $100.00 per month for each of the parties' two children as child support; that the parties' daughter, Sherri Lyn, became 18 years of age on February 12,

1971, and that the defendant thereupon ceased making payments to the plaintiff for the support of Sherri Lyn and made no payments to plaintiff in her behalf thereafter; that the defendant has made no support payments for the parties' son, Rick Arland, since February, 1973; that on or about February 25, 1973, the parties' daughter Sherri Lyn, suffered a serious fracture of the ankle and has required extensive surgical, medical and hospital care since that time; that to date the surgical, medical, hospital, and pharmaceutical bills incurred because of the injury to Sherri Lyn have approximated Two Thousand Seven Hundred Dollars ($2,700.00), and it is possible that additional expenses will be incurred before the fracture is healed; that the said expenses were not anticipated at the time of the decree herein; that plaintiff is unemployed and is without funds with which to pay the surgical, medical, hospital, and pharmaceutical expenses; and that the plaintiff has been required to hire an attorney, and has agreed to pay him a reasonable fee in connection with this motion; all of which more fully appears in the affidavit of the plaintiff, annexed hereto.

Dated this 22nd day of May, 1973.

/s/ Bryce E. Roe
ROE AND FOWLER
340 East Fourth South
Salt Lake City, Utah 84111

Attorney for Plaintiff

[Receipt for service omitted in printing]



## DISTRICT COURT OF SALT LAKE COUNTY
## STATE OF UTAH

[Title omitted in printing]

## PLAINTIFF'S AFFIDAVIT

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.

Thelma B. Wasescha, being first duly sworn, deposes and says:

1. I was formerly known as Thelma B. Stanton, and am the plaintiff in the above entitled action.

2. On or about November 29, 1960, this court entered a decree of divorce in said action which contained, among other things, the following:

> Defendant is ordered to pay to plaintiff the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support and $100.00 per month as alimony, to be paid on or before the 1st day of each month through the office of the Salt Lake County Clerk.

3. Plaintiff and defendant have two children, Sherri Lyn, born on February 12, 1953, and Rick Arland, born on January 29, 1955.

4. Defendant paid plaintiff $100.00 per month as support for their daughter, Sherri Lyn, through February, 1971, but has made no payments to plaintiff as support for Sherri Lyn since that date.

5. Defendant paid plaintiff $100.00 per month as support for their son, Rick Arland, through Feb-

ruary, 1973, but has made no payments to plaintiff as support for Rick Arland since that date.

6. On or about February 25, 1973, the parties' daughter, Sherri Lyn, severely fractured her ankle and required surgical, medical, and hospital care for an extended period of time. As a result of the accident the plaintiff has incurred medical, surgical, hospital, and pharmaceutical expenses in the amount of approximately Two Thousand Seven Hundred Dollars ($2,700.00), and it is possible that additional medical, hospital, and pharmaceutical expenses will be incurred before the fracture has healed.

7. Plaintiff is unemployed and is unable to obtain employment at the present time, and is without funds to pay the medical, surgical, hospital, and pharmaceutical expenses of aforesaid.

8. It has been necessary for plaintiff to hire an attorney to represent her in these proceedings, for which she has agreed to pay him a reasonable fee.

/s/ Thelma B. Wasescha

[Jurat omitted in printing]



## DISTRICT COURT OF SALT LAKE COUNTY STATE OF UTAH

[Title omitted in printing]

## PETITION FOR MODIFICATION OF DECREE OF DIVORCE

STATE OF UTAH }
County of Salt Lake } ss.

Defendant James Lawrence Stanton, Jr., respectfully alleges and petitions the Court as follows:

1. He as petitioner herein and the plaintiff, Thelma B. Stanton, were husband and wife but were divorced on the 29th day of November, 1960, and that there were two children as issue of said marriage, namely, Sherri Lyn Stanton and Rick Arlund Stanton.

2. Pursuant to the terms of the Decree of Divorce, plaintiff was awarded the care, custody and control of the two minor children of the parties and that defendant was ordered to pay plaintiff the sum of $200.00 per month for child support, said sum being divided equally for the support of each of the two children of the parties.

3. That on February 12, 1971, Sherri Lyn Stanton attained her majority, therefore defendant is no longer obligated to pay child support for said Sherri Lyn Stanton.

4. That since the time of defandant's divorce with plaintiff herein, petitioner has remarried and at the present time resides in Salt Lake County, State of Utah with his present wife.

5. That in February of 1973 the minor child Rick Arlund Stanton requested that he be allowed to reside with petitioner herein and has ever since that time resided with petitioner and his present wife and has done so with the permission of plaintiff herein and that the said Rick Arlund Stanton is voluntarily residing with petitioner herein.

6. That the said Rick Arlund Stanton even though a minor is gainfully employed at the present time and earns sufficient money to care for himself but any and all other needs including room and board are supplied for the said Rick Arlund Stanton by petitioner herein.

7. That since the said Rick Arlund Stanton is residing with petitioner herein that petitioner should not be required to pay child support in the sum of $100.00 for said Rick Arlund Stanton.

WHEREFORE, petitioner prays for an order of the above-entitled Court awarding petitioner the permanent care, custody and control of Rick Arlund Stanton, subject to the right of reasonable visitation privileges of the plaintiff, and for a further order of the Court eliminating defendant's child support obligation to plaintiff.

Dated this 25th day of May, 1973.

/s/ James Lawrence Stanton, Jr.

[Jurat omitted in printing]



## DISTRICT COURT OF SALT LAKE COUNTY STATE OF UTAH

[Title omitted in printing]

## AFFIDAVIT OF DEFENDANT

STATE OF UTAH }
County of Salt Lake } ss.

James Lawrence Stanton, Jr., being first duly sworn upon his oath, deposes and says:

1. That he is the defendant in the above-entitled action.

2. That Sherri Lyn Stanton, the daughter of the parties herein, turned 18 years of age on February 12, 1971, and up to that time defendant was current in his child support obligation as ordered by the Court in the Decree of Divorce entered in this matter.

3. That since the said Sherri Lyn Stanton has turned 18 years of age she resided for approximately six months with the defendant and that he paid for her support and care during that time. That since the said Sherri Lyn Stanton has turned 18 years of age she has resided with the plaintiff only for approximately six months and resided at other places and has been employed with the Paris Company and had other employment.

4. That since turning 18 years of age the said Sherri Lyn Stanton has resided outside the State of Utah for periods of time and been employed outside the State of Utah to the best of affiant's knowledge.

5. That in approximately February of this year

the said Sherri Lyn Stanton broke her ankle and that defendant has given the said Sherri Lyn Stanton the sum of $100.00, has paid the LDS hospital $50.00 and has received other hospital and medical bills for the care of injuries sustained by the said Sherri Lyn Stanton and that affiant is attempting to have his insurance company pay said hospital and medical bills and if is unsuccessful in that it is affiant's intention to pay said bills. Copies of the bills which affiant has at this point are attached hereto and made a part hereof by reference.

6. That at the time the said Sherri Lyn Stanton turned 18 years of age, she attained her majority and has been and was emancipated and is emancipated at the present time and affiant feels that he is not responsible under the laws of the State of Utah or under the Decree of Divorce to support said child further.

7. That the parties other child, Rick Arlund Stanton, presently resides with defendant and has resided with defendant since February of 1973, and that affiant has paid for the support of said minor child since that time. That during the course of time that the said Rick Arlund Stanton resided with plaintiff, affiant was current in his child support obligation to plaintiff for said child under the Decree of Divorce entered.

8. That the said Rick Arlund Stanton voluntarily left the residence of plaintiff and was permitted to reside with defendant.

9. That the said Rick Arlund Stanton even though a minor is gainfully employed at the present



time and earns sufficient money to care for himself but any and all other needs including room and board are supplied for the said Rick Arlund Stanton by affiant herein.

10. It has been necessary for defendant to hire an attorney to represent him in these proceedings for which he has agreed to pay his attorney a reasonable attorney fee.

Dated this 25th day of May, 1973.

/s/ James Lawrence Stanton, Jr.

[Attachments, jurat and mailing certificate omitted in printing]

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## DISTRICT COURT OF SALT LAKE COUNTY STATE OF UTAH

[Title omitted in printing]

## PLAINTIFF'S ANSWERS TO INTERROGATORIES

COUNTY OF SALT LAKE } ss
STATE OF UTAH }

Thelma B. Wasescha, being first duly sworn, deposes and says that she was formerly known as Thelma B. Stanton; that she is the plaintiff in the above entitled action; and that the following answers to interrogatories served upon her by defendant on May 25, 1973, are true and correct:

Interrogatory No. 1: Please state whether or not Sherri Lyn Stanton, the daughter of the parties hereto, has lived continuously with the plaintiff since the time she turned 18 years of age, thus obtaining her majority.

*Answer.* No, but she did live continuously with plaintiff except for brief periods.

Interrogatory No. 2: If the answer to the next preceding Interrogatory is in the negative, please state with particularity the amount of time since her turning 18 years old that she has not lived with plaintiff.

*Answer.* During a four month period she shared an apartment away from home. Otherwise she has resided in plaintiff's home except for brief periods during which she stayed with friends.

Interrogatory No. 3: Please state with particularity the places, showing the periods of time, in which the parties daughter, Sherri Lyn Stanton, has resided in other than the home of plaintiff.

*Answer.* She shared an apartment at Sixth Avenue and "M" Streets, Salt Lake City, Utah, during the months of February, March, April, and May, 1972. In addition she has been away from the home of the plaintiff for brief vacations with friends.

Interrogatory No. 4: Please state whether Sherri Lyn Stanton has been employed since the time she turned 18 years of age.

*Answer.* She has been employed on a few occasions for short periods. From May 24 1971, to July 30, 1971, she worked part-time as a pantry waitress, three hours daily during the lunch period, for $1.15 per hour,



and earned a total of $220.53. She worked as a waitress at Cory Anderson's Pies, 369 South Fourth East, Salt Lake City, Utah, from March 2, 1972, to May 28, 1972, during which period she earned $513.64. She was employed as a clerk at the Paris Company, Salt Lake City, Utah, during the Christmas rush period from November 15, 1972, to December 31, 1972, at a rate of $1.60 per hour, earning a total of $223.71. She worked for defendant at True-Fit Seat Cover Center for about two and one half weeks at $1.60 per hour. She is not presently employable.

Interrogatory No. 5: If the answer to the next preceding Interrogatory is in the affirmative, please state by whom she was employed and if by more than one employer state the names of her employers, periods of time for which she was employed for each individual employer, the nature of her employment and her rate of pay.

*Answer.* See answer to Interrogatory No. 4.

Interrogatory No. 6: Please state whether or not Sherri Lyn Stanton has resided outside the State of Utah since the time she turned 18 years of age.

*Answer.* No, but she visited a friend in Vermont for a short time.

Interrogatory No. 7: If the answer to the next preceding Interrogatory is in the affirmative, please state the length of time and the places where she resided during the time she resided outside the State of Utah.

*Answer.* Not applicable.

Interrogatory No. 8: Please state whether or not Sherri Lyn Stanton has been employed outside the State of Utah.

*Answer.* She has not.

Interrogatory No. 9: If the answer to the next preceding Interrogatory is in the affirmative, please state the name and address of her employer, nature of her employment and her rate of pay with amount of income received.

*Answer.* Not applicable.

Interrogatory No 10: Please state whether Sherri Lyn Stanton was residing with plaintiff at the time she broke her ankle.

*Answer.* At the time Sherri Lyn broke her ankle she had been staying with a friend for about two weeks.

Interrogatory No. 11: If the answer to the next preceding Interrogatory is in the negative, please state where Sherri Lyn Stanton was residing at the time she broke her ankle.

*Answer.* The friend lived at 72 "T" Street, Salt Lake City, Utah.

Interrogatory No. 12: Please state in relation to the time Sherri Lyn Stanton broke her ankle that she began residing with plaintiff.

*Answer.* Sherri Lyn was brought from the hospital to the plaintiff's residence and has been living there ever since.

Interrogatory No. 13: At any time that the parties daughter Sherri Lyn Stanton did not reside



at the home of plaintiff, please state whether or not plaintiff contributed to her daughter's support during that period of time.

*Answer.* Only during the period in which Sherri Lyn was sharing an apartment and working at Cory Anderson's Pies, approximately February to May, 1972, did I not contribute to her support.

Interrogatory No. 14: If the answer to the next preceding Interrogatory is in the affirmative, please state at what intervals plaintiff did contribute to Sherri Lyn Stanton's support and the nature and amount of said support.

*Answer.* Not applicable.

Interrogatory No. 15: Please state whether or not Rick Arland Stanton resides with the plaintiff at the present time.

*Answer.* Yes.

Interrogatory No. 16: If the answer to the next preceding Interrogatory is in the negative, please state the length of time it has been since the said Rick Arland Stanton has resided with plaintiff.

*Answer.* Rick Arland resided with the defendant during March, April and May, 1973.

Interrogatory No. 17: Please state whether or not Rick Arland Stanton is employed at the present time if that is known to plaintiff.

*Answer.* Yes.

Interrogatory No. 18: If the answer to the next preceding Interrogatory is in the affirmative, please

state the name of the employer of the said Rick Arland Stanton and the amount of income earned by the said minor child from the employer.

*Answer.* He is employed by Perma-Pak, 440 East 2430 South, Salt Lake City, Utah, and earns approximately $..... per week.

Interrogatory No. 19: Please state whether or not Rick Arland Stanton has been employed since February of 1973 and whether or not he has had any other employers other than the one in the next preceding paragraph.

*Answer.* Yes. He had been working for his father, the defendant, at True-Fit Seat Cover Center, 601 South State, Salt Lake City, Utah, but was discharged summarily when the deefndant was served with plaintiff's Motion for Judgment in this case on about May 23, 1973. On that same day Rick Arland obtained his employment with Perma-Pak.

Interrogatory No. 20: If the said Rick Arland Stanton is not residing with plaintiff, please state the circumstances under which he left the residence of plaintiff and moved to the place where he is now residing.

*Answer.* He is now residing with the plaintiff. He resided with defendant for a short period because his mother and his younger sister both proved allergic to his Saint Bernard dog, and the dog could not be kept in the home.

Interrogatory No. 21: Please state whether or not the defendant was current on his child support obligation to plaintiff for the said Rick Arland Stanton



as long as the said Rick Arland Stanton resided with plaintiff.

*Answer.* Yes.

Dated this 15th day of June, 1973.

/s/ Thelma B. Wasescha

[Jurat and mailing certificate omitted in printing]

---

## DISTRICT COURT OF SALT LAKE COUNTY STATE OF UTAH

[Title omitted in printing]

## AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The plaintiff's motion for judgment in her favor and against defendant in the sum of $3,000, plus costs and reasonable attorney's fees and for an order that defendant shall indemnify plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital and pharmaceutical bills arising out of an accidental injury suffered by the parties daughter, Sherri Lyn, came on regularly for hearing before the Honorable James S. Sawaya, one of the judges of the above entitled court, on May 13, 1973, plaintiff appearing in person and by and through her attorney Bryce E. Roe of the firm of Roe and Fowler, and defendant appearing in person and by and through his attorney, D. Gary Christian of the firm of Kipp and Christian, and the court having reviewed plaintiff's motion and affidavit and having reviewed defendant's

affidavit, and having heard the statements and arguments of counsel, and being fully advised in the premises, and good cause appearing therefore, now makes and enters its:

## FINDINGS OF FACT

1. Plaintiff and defendant were formerly husband and wife, having been divorced from each other on November 29, 1960.

2. There were two children born as issue of said marriage, namely, Sherri Lyn, born February 12, 1953, and Rick Arland, born January 29, 1955.

3. Pursuant to the terms of the decree of divorce, defendant was ordered to pay plaintiff the sum of $100 per month for each child as child support on or before the first day of each month.

4. On February 12, 1971, Sherri Lyn, one of the children of the parties, attained her majority by virtue of reaching the age of 18 years, at which time defendant was current in his child support obligations to plaintiff.

5. On or about February 25, 1973, Sherri Lyn Stanton was involved in an accidental injury whereby she fractured her ankle, and there have been certain hospital, surgical, medical, and pharmaceutical bills incurred for the care of the same, and the plaintiff demands that defendant should indemnify and hold her harmless for the payment of said bills, and pay a reasonable attorney's fee for bringing of her motion.

6. Defendant has represented to the court that he intends to pay said hospital and medical bills in-



curred by Sherri Lyn Stanton as a result of said accidental injury.

7. The parties' other child, Rick Arland Stanton, resided with defendant during March, April, and May, 1973, and returned to reside with plaintiff on May 30, 1973. During said period defendant did not pay plaintiff any support money.

From the foregoing findings of fact the court now makes and enters its:

## CONCLUSIONS OF LAW

1. On February 12, 1971, Sherri Lyn Stanton, one of the children of the parties, became 18 years of age, and under the provisions of 15-2-1 Utah Code Annotated 1953, thereby attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn Stanton since that date.

2. The defendant is not obligated to pay support money to the plaintiff for the support of Rick Arland Stanton during the three month period in which said Rick Arland Stanton was residing with defendant.

3. Because of the defendant's willingness to pay the medical, surgical, hospital, and pharmaceutical bills incurred by the parties' daughter Sherri Lyn Stanton, it is unnecessary to enter an order respecting same.

4. Plaintiff should not be entitled to recover from defendant any attorney's fees.

5. Plaintiff's motion should be denied.

It is hereby ORDERED that an order be entered accordingly.

Dated this 13th day of June, 1973.

BY THE COURT:

/s/ James S. Sawaya,
District Judge

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DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

---

THELMA B. STANTON,
*Plaintiff,*

v.

JAMES LAWRENCE STANTON, JR.,
*Defendant.*

ORDER
Civil No. 125233

The plaintiff's Motion for Judgment in her favor and against defendant in the sum of $3,000 plus costs and reasonable attorney fees, and for an order that defendant shall indemnify plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital and pharmaceutical bills arising out of an accidental injury suffered by the parties' daughter, Sherri Lyn, came on regularly for hearing before the Honorable James S. Sawaya, one of the judges of the above entitled court on May 31, 1973, plaintiff appearing in person and by and through her attorney Bryce E. Roe of the firm of Roe and Fowler, and defendant appearing in person and by and through his attorney D. Gary Christian of the firm of Kipp and Christian, and the court having reviewed plaintiff's Motion and Affi-



davit and having reviewed deendant's Affidavit and having heard the statements and arguments of counsel, and being fully advised in the premises, the court heretofore having made and entered its Findings of Fact and Conclusions of Law, now, therefore, upon the motion of D. Gary Christian,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's Motion for Judgment against defendant for the sum of $3,000 and for costs and reasonable attorney's fees and for an order that defendant shall indemnify plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital and pharmaceu ical bills arising out of an accidental injury suffered by the parties' daughter, Sherri Lyn, be and the same is hereby denied.

Dated this 13th day of June, 1973.

BY THE COURT:

/s/ James S. Sawaya,
District Judge

---

DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

[Title omitted in printing]

NOTICE OF APPEAL

Notice is hereby given that Thelma B. Stanton, plaintiff above named, hereby appeals to the Supreme Court of the State of Utah from the amended Order

entered herein on June 13, 1973, denying plaintiff's motion for judgment, indemnity, and attorney's fees.

Dated this 22nd day of June, 1973.

/s/ Bryce E. Roe,
Attorney for Plaintiff-Appellant

[Certificate of mailing omitted in printing]

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The decision and opinion of Supreme Court of the State of Utah, dated January 4, 1974, is printed in full on Appendix C, pages 5A through 11A, of the Jurisdictional Statement on file herein.

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**IN THE SUPREME COURT OF THE STATE OF UTAH**

Regular October Term, 1973 January 4, 1974

THELMA B. STANTON,
*Plaintiff and Appellant,*

v.

JAMES LAWRENCE STANTON,
*Defendant and Respondent.*

REMITTITUR
No. 13362
Dist. No. 125233

This cause having been heretofore argued and submitted, and the Court being sufficiently advised in the premises, it is now ordered, adjudged and decreed that the judgment of the District Court herein be, upon the basis of the decree, and the record before us, the plaintiff is entitled to judgment for the $300 accrued support money for the son Rick, and to a continuance thereof



during his minority unless otherwise properly determined and ordered by the District Court; except as to this last item, the judgment is affirmed. The parties to bear their own costs.

---

Regular October Term, 1973 January 30, 1974

**(UPON PETITION FOR REHEARING)**

Upon consideration of the petition for rehearing heretofore filed herein, and the arguments of counsel thereupon had, it is ordered that the rehearing be, and the same is, denied.

Issued January 30, 1974.

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**DISTRICT COURT OF SALT LAKE COUNTY STATE OF UTAH**

[Title omitted in printing]

**NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES**

**NOTICE IS HEREBY GIVEN** that Thelma B. Wasescha, formerly known as Thelma B. Stanton, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Utah filed January 4, 1974, affirming an order of the District Court of Salt Lake County entered herein on June 13, 1973, insofar as it denied plaintiff judgment for accrued support money for the party's daughter, Sherri Lynn Stanton.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

DATED this 5th day of March, 1974.

Bryce E. Roe and
William G. Fowler

340 East Fourth South
Salt Lake City, Utah 84111

Attorneys for Appellant

Supreme Court, U. S.
FILED
JUN 8 1974
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

October Term, 1973

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No. 73-1461

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THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.
*Appellee.*

---

On Appeal from the Supreme Court of the State of Utah

---

## MOTION TO DISMISS

---

D. Gary Christian
Kipp and Christian
520 Boston Building
Salt Lake City, Utah 84111
Counsel for Appellee

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IN THE

# Supreme Court of the United States

October Term, 1973

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No. 73-1461

---

THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.
*Appellee.*

---

On Appeal from the Supreme Court of the State of Utah

---

## MOTION TO DISMISS

---

## OPINION BELOW

The opinion of the Utah Supreme Court in this matter appears in 517 P.2d 1010 (1974) and in the as yet unpublished Volume 30 of the Utah Reports (2d). It is set forth in the Appendix of this Motion at pages 1a through 7a.

## FACTS

This case arises from a Decree of Divorce entered November 29, 1960 in the District Court of Salt Lake County, State of Utah, which awarded to appellant the care and custody of the minor children, Sherri Lyn and Rick Arlund and which ordered appellee to pay appellant One Hundred Dollars ($100.00) per month per child as child support. On February 22, 1971, Sherri Lyn attained the age of eighteen whereupon appellee discontinued payments for her support.

On May 22, 1973 appellant filed a Motion for Judgment seeking recovery of the alleged delinquencies from February 22, 1971. The district court denied this Motion giving as its reason the following statement from the Amended Findings of Fact and Conclusions of law:

> 1. On February 12, 1971, Sherri Lyn Stanton, one of the children of the parties became 18 years of age, and under the provisions of 15-2-1 Utah Code Annotated 1953, thereby attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn Stanton since that date.
>
> . . .

Section 15-2-1 which formed the basis of the decision reads as follows:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

Appeal from this decision was taken to the Utah State Supreme Court on January 4, 1974, where the judgment of the lower court was affirmed. The decision was based



upon a general theory of judicial restraint. Noting that various reasons could be advanced for the adoption of a statute which distinguishes between men and women in the eighteen to twenty-one age group the court stated:

> But we do not regard it as our judicial function to pass upon the soundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential role in the history of the development of the law as declared in the statute under attack.

The court also advanced the closely related reason that full determination of the question of constitutionality of the statute would require a decision by the court as to what the uniform age of majority should be. As to this question the court stated:

> We think this case and the proposal under consideration provide a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature.

Appellant filed Notice of Appeal from the decision to this court. The purpose of this Motion is to seek dismissal of that appeal.

## POINT I

## APPELLANT LACKS STANDING TO ASSERT THE UNCONSTITUTIONALITY OF SECTION 15-2-1, UTAH CODE ANNOTATED, 1953

The Decree of Divorce which severed the matrimonial bonds of appellant and appellee in 1960 provided that

. . .

> 2. Plaintiff [appellant] is awarded care and custody of the two *minor* children.
> . . . [Emphasis added.]

and

> 5. Defendant is ordered to pay to plaintiff the sum of . . . $100.00 per month for each child as child support. . . .

Section 15-2-1, Utah Code Annotated, 1953 provides:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years. . . .

The trial court found that this provision eliminated any of Mr. Stanton's obligations for payment of support to his eighteen-year-old daughter. The Utah Supreme Court upheld this decision. No determination was made that appellant was obligated to continue to provide support for her daughter. Nonetheless, appellant contends that she is harmed by the court's determination. However, it is manifest that she has no standing to challenge the constitutionality of Section 15-2-1.

It is a well-established rule of this court that only individuals whose interests have been prejudiced or who will suffer direct substantial injury as a result of application of a statute may attack its constitutionality. *Barrows* v. *Jackson,* 346 U.S. 249, 97 L.Ed. 1586, 1595 (1952). This court has also stated that where a legislative enactment is being attacked a logical link between the status of the challenger and the statute must be established. *Flast* v. *Cohen,* 392 U.S. 83, 102, 20 L. Ed. 2d 947, 963.



In this case appellant can demonstrate neither a substantial injury nor the requisite nexus between her status and Section 15-2-1. Appellant is not a minor who alleges that she should be treated as an adult, or an adult who contends she should be given the protection afforded minors. Rather, appellant contends that she is harmed because her husband refuses to continue making support payments for their eighteen-year-old daughter. Such a position would have merit if appellant were the daughter whose payments were discontinued. However, as the mother, appellant receives no benefits from the support payments; she is merely the conduit who in effect passes such payments along to her daughter.

It is unclear from her Jurisdictional Statement whether appellant contends that she is obligated under other Utah statutes to continue supporting her daughter until she attains the age of twenty-one. (E.g., *Uniform Civil Liability for Support Act,* Section 78-45-1, et seq., Utah Code Annotated, 1953, 1973 pocket supplement.) The divorce decree which awards "*care* and custody of the *minor* children" to appellant certainly appears to dictate a contrary conclusion. But whatever the merits of such a contention, such liability is at present purely speculative and as such is of such "a hypothetical or abstract character" as to deprive appellant of standing. *Aetna Life Insurance Company* v. *Haworth,* 300 U.S. 227, 240, 81 L.Ed. 617, 621, 57 S.Ct. 461 (1937); *Flast* v. *Cohen, supra* at 100.

In view of appellant's lack of standing, the appeal should be dismissed.

## POINT II

## A DETERMINATION THAT SECTION 15-2-1 IS UNCONSTITUTIONAL WOULD NECESSARILY INVOLVE THE COURT IN ISSUES WHICH ARE ESSENTIALLY NONJUSTICIABLE UNDER THE POLITICAL QUESTION DOCTRINE

Section 15-2-1 sets the age of majority at twenty-one years for men and eighteen years for women. Appellant attacks this statute as violating the Equal Protection Clause of the Fourteenth Amendment. A finding that the statute is unconstitutional would necessitate a further finding that the age of majority be lowered to eighteen in men or raised to twenty-one for women. Such a determination would fall squarely within the "political question" doctrine.

In *Baker* v. *Carr*, 369 U.S. 186 (1962) this court examined the doctrine of nonjusticiability where political questions were concerned. The decision provides the following lists of factual situations involving political questions:

> . . . a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherance to a political decision already made; or the potentiality of embarrassment from mcltifarious pronouncements by various departments on one question. 369 U.S. at 217.



As defined above the setting of the age of majority is clearly a political question. There are, for example, no "judicially discoverable and manageable standards" for resolving the question of whether the age for men should be lowered or the age for women raised. Similarly, any determination that a particular age should be adopted, or that the present distinction is without rational basis requires a "determination of a kind clearly for nonjudicial discretion."

Indeed, the Utah Supreme Court recognized the political nature of the issue posed when it stated:

> We think this case and the proposal under consideration provides a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature. 517 P.2d 1010, 1013.

Thus, without actually denominating it as such the court below applied the "political question" doctrine in upholding the constitutionality of the statute. For the same reason this court should dismiss appellant's appeal.

## POINT III

## THE JUDGMENT RESTS ON AN ADEQUATE NONFEDERAL BASIS

A careful reading of the Utah Supreme Court's decision on appeal makes it clear that the court did not attempt to decide the case according to whether or not the statute is constitutional. Rather, the court held that the reasons underlying the adoption of the statute are essentially political in nature, and thus, beyond the ken of the

courts. The decision also notes that in the event the court were to invalidate the statute, it would be faced with the task of determining what the age of majority would be. The decision notes that such a determination is a political one for the legislature rather than the courts.

Thus, the decision rests upon a nonfederal basis namely, that the issue presented was a political question. Accordingly, appellant's appeal should be dismissed as provided in Rule 16(b), Supreme Court Rules.

## CONCLUSION

Appellant's appeal should be dismissed and/or the judgment below affirmed for three reasons: First, appellant lacks standing to challenge Section 15-2-1, second, the issues presented by the appeal involve political questions which should be left to the legislative branch for determination, and third, the decision of the Utah State Supreme Court was arrived at on a nonfederal basis.

Any one of the reasons is sufficient to warrant this court's dismissal of the appeal.

Respectfully submitted,

D. GARY CHRISTIAN of
KIPP AND CHRISTIAN



## APPENDIX

## IN THE SUPREME COURT OF THE STATE OF UTAH

Thelma B. Stanton,
*Plaintiff and Appellant,*

v.

James Lawrence Stanton, Jr.,
*Defendant and Respondent.*

No. 13362

FILED
January 4, 1974

L. M. Cummings, Clerk

CROCKETT, Justice:

The main issue presented on this appeal is plaintiff's attack on the constitutionality of Section 15-2-1, U.C.A. 1953:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years, but all minors obtain their majority by marriage.

She contends that making the age of majority lower for women than for men is discriminatory, and denies equal protection of the laws.[1]

After nine years of marriage, and the birth of two children, Sherri, born February 12, 1953, and Rick, born January 29, 1955, the parties were divorced and the decree required the defendant to pay $100 per month alimony and $100 per month for the support of each child. It is not disputed that he made these payments until February 1971, at which time he ceased paying for Sherri because she had reached the age of 18. In supplemental proceedings the plaintiff sought judgment for support payments

[1] Utah constitution, Art. I, Secs. 7 and 24; and Art. IV, Sec. 1; and also U.S. Constitution, Amend. XIV.

for Sherri accruing since that time. From an adverse ruling, she appeals. The trial court ruled in accordance with the assumption since time immemorial in our law that our statutes dealing with the support of "children" meant during the period of minority,[2] and denied her petition. She appeals.

In considering plaintiff's charge that the statute just quoted is unconstitutional there are some general principles to be applied. Due to the important concept of separation of powers in our government, the courts should defer to the prerogative of the legislature to make the laws, and confine their own actions to interpreting and applying them. This, of course, does not negate their responsibility of determining an act to be invalid if there is a clear and irreconcilable conflict between it and the Constitution, which is the supreme and controlling law.[3] But the courts are in a peculiar and somewhat delicate position because it falls to their lot to decide whether such conflict exists, and there is always the danger of trespassing upon the legislative prerogative. For the reason, and in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect for the prerogatives of the legislature; and not strike down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict,[4] to the end that the legislature is permitted

[2] See Secs. 30-3-5, U.C.A. 1953, support and custody of children in divorce cases; 30-2-10, cases of abandonment; 30-3-10, cases of separation; and 30-4-3, separate maintenance.

[3] See Allen v. Rampton, 23 Utah 2d 336, 463 P.2d 7, and authorities therein cited.

[4] Newcomb v. Ogden City Pub. School Teachers' Retirement Commission, 121 Utah 503, 243 P.2d 941 (1952).



to perform its intended function of making the laws, and the courts theirs, of interpreting and applying them.

It is also worthy of mention that this should be more true as to acts of a state legislature, which acts as representatives of a sovereign state, an thus has inherently all of the powers of sovereignty, except as otherwise specified or limited by the state constitution, as contrasted to the federal government which has only those powers expressly granted, with all others reserved to the people. See the language of Amendments IX and X, U.S. Constitution.

There is no doubt that the questioned statute treats men and women differently. But there is likewise no question but it may treat people differently, based on classification, so long as there is a reasonable basis for the classification, which is related to the purpose of the act, and it applies equally and uniformly to all persons within the class.[5] The plaintiff's argument is that, notwithstanding the foregoing, there is no sound reason for differentiation between the sexes as to the termination of the right of support. She asserts that whatever basis there may have been in former days for continuing the support of boys for the extra three years, because of the liberalization process in which women have become more involved in all affairs of the world outside the home, that basis no longer exists.

We are aware that both society in general and interfamily relationships have been undergoing change, as they undoubtedly should. We do not desire to be understood as opposing change simply because it is different; and we

[5] State v. Mason, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330; Slater v. Salt Lake City, 115 Utah 476, 206 P.2d 153, 9 A.L.R. 2d 712.

wholly agree that an essential aspect of the vitality of the law is that it should change to meet changing conditions. But neither of those propositions provide the answer to the problem here.

It may be that our ancestors for generations before us have been misguided in their belief that there are some fundamental differences between the sexes. But it is remarkable how some of those old notions do continue to prevail as to numerous interesting differences. Included among them is the belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family; and that however many exceptions and whatever necessary and proper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities.

Perhaps more important than this, there is another widely accepted idea: that girls tend generally to mature physically, emotionally and mentally before boys, and that they generally tend to marry earlier.[6] We realize that as a court made up of men, there is a possibility of masculine bias, which we should endeavor to guard against in considering matters of this character. But we do not regard it as our judicial function to pass upon the soundness or the unsoundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential role in the history of the development of the law as declared in the statute under attack.

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[6] See a good statement on this by Justice Dailey in Jacobson v. Lenhart, 30 Ill. 2d 225, 195 N.E. 2d 638.



Should it be deemed the prerogative of the court to initiate a change in the age at which the parental duty of support terminates, it would be appropriate to reflect upon another aspect of the problem: that is, how would the shoe fit on the other foot? Assume that we would take judicial cognizance of the trend in the differing role of women, perhaps we should similarly notice the trend toward the earlier emancipation and further freedom of conduct of minors; and that this applies to both boys and girls. One indication of this is the recent reduction of the age for voting to 18.[7] From this it could be argued with equal logic that instead of extending the defendant's duty of supporting Sherri to 21, he should be relieved of the duty of supporting the son Rick (age 16) when he reaches 18. Thus in a contest between the plaintiff and the defendant as to the support of these children, there would be a net loss to the plaintiff.

On the basis of what has been said above we make these observations: that there are various factors which should be considered in formulating the policy of the law as to when the duty to support children should terminate; that the opposing contentions with respect to the merits of plaintiff's proposal are matters upon which reasonable minds might entertain different opinions; that due to those facts, combined with the long existence and application of this statute in harmony with our constitutional provisions, it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitu-

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[7] See Sec. 20-2-11.1, U.C.A. 1953; and Federal Voting Rights Act Amendments of 1970, Public Law 91-285.

tional provisions that it should be stricken down as invalid.

We think this case and the proposal under consideration provide a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature.[8] Then the proposal would be subject to public scrutiny and debate, and action be taken thereon by the representatives of the people, rather than to have a change result from a controversy between private individuals. There is the further advantage that if such a change is made legislatively, everyone could know the time, the manner and the extent of the change; and the legislature in the exercise of its wisdom and prerogative, could also provide how the new law would affect the thousands of divorce decrees already entered and under which such problems might arise, including the possible ex post facto, current, and prospective effects.

There is an adjunctive minor issue in this case: defendant contends that the son Rick lived with him for about three months and that he is therefore entitled to a credit of $300 for Rick's support during that time. The general rule is that the decree fixes the obligations of the parties; and that they cannot modify it or change their obligations by their conduct.[9] Otherwise sometimes interfamily tensions and machinations could make a shambles

[8] That majority or minority is a status and that is the prerogative of the legislature to fix and change the age of majority, see in re Morrissey, 137 U.S. 157; and Springstun v. Springstun, 131 Wash. 109, 229 P. 14, 40 A.L.R. 595; 27 Am. Jur. 748, Sec. 5.

[9] See Harris v. Harris, 14 Utah 2d 96, 377 P.2d 1007, Marks v. Marks, 98 Utah 400, 100 P.2d 207.



of determining and enforcing the rights and duties of the parties.

In the absence of any modification of the decree, the support money accrued in accordance with its terms; and it was not the prerogative of the defendant to unilaterally decide that he would not pay the support money and offset it by favors conferred upon the children. However, in matters concerning the custody and support of children, because of their highly equitable nature, it is appropriate for the trial court to take into consideration the entire circumstances in making any order of enforcement of the decree, by contempt or otherwise, having in mind his equitable powers, to make any adjustment he may think fair and justified.

Nevertheless, upon the basis of the decree, and the record before us, the plaintiff is entitled to judgment for the $300 accrued support money for the son Rick, and to a continuance thereof during his minority unless otherwise properly determined and ordered by the district court. Except as to this last item, the judgment is affirmed. The parties to bear their own costs.

WE CONCUR:

E. R. Callister, Jr.,
Chief Justice

R. L. Tuckett,
Justice

F. Henri Henriod,
Justice

Joseph E. Nelson,
District Judge

A. H. Ellett, Justice, having disqualified himself, does not participate herein.

Supreme Court, U. S.
FILED
JUN 17 1974
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,
*Appellee.*

On Appeal from the Supreme Court of the State of Utah

## APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS

Bryce E. Roe
340 East Fourth South
Salt Lake City, Utah 84111
Counsel for Appellant

Of Counsel:
William G. Fowler
340 East Fourth South
Salt Lake City, Utah 84111

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IN THE

Supreme Court of the United States

October Term, 1973

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No. 73-1461

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THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,
*Appellee.*

---

On Appeal from the Supreme Court of the State of Utah

---

# APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS

---

## INTRODUCTION

The appellee's motion to dismiss this appeal is based on three grounds, (1) that appellant has no standing, (2) that the controversy is not justiciable because the question raised is a "political question," and there is no nexus between appellant's claim and the constitutional issue raised, and (3) that the Supreme Court of Utah decided the case on adequate non-federal grounds.

## ARGUMENT

### I

### PLAINTIFF HAS STANDING TO SUE

In *Flast v. Cohen*, 392 U.S. 83 (1968), this court pointed out the difference between standing to sue and justiciability. With respect to standing, the court said:

> Standing is an aspect of justiciability, and, as such, the problem of standing is surrounded by the same complexities and vagaries that inhere in justiciability. Standing has been called one of "the most amorphous [concepts] in the entire domain of public law."
>
> * * *
>
> Despite the complexities and uncertainties, some meaningful form can be given to the jurisdictional limitations placed on federal court power by the concept of standing. The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The "gist of the question of standing" is whether the parties seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the persons whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable. Thus, a party may have standing in a particular case, but the federal court may nevertheless decline to pass on the merits of the case because, for example, it presents a political question. A proper



> party is demanded so that the federal courts will not be asked to decide "ill-defined controversies over constitutional issues," *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), or a case which is of "a hypothetical or abstract character."

Not only does the appellant have standing to bring this action, she is the only person who may do so. To argue otherwise is to disregard the nature of the award of child-support to one party or another in divorce proceedings. Although awards are made for the support of children, the decree operates directly in favor of a party to the divorce proceeding. The nature of a support award was pointed out by the Utah Supreme Court in *Anderson v. Anderson*, 110 Utah 300, 172 P.2d 132 (1946):

> Alimony relates to the support of the divorced wife, and support money relates to compensation to a spouse for the support of minor children.

Except in those instances in which a child has been denied the support to which it is entitled, the right to past-due support money is a right which exists in the spouse to whom the award was made. In *Larsen v. Larsen*, 5 Utah 2d 224, 300 P.2d 596 (1956), an action for past-due support, the Utah Supreme Court said:

> If the child has been the beneficiary of equivalent support and education so that the mother is entitled to receive all of said past due support money, she should be free to release, compromise or waive that which is hers.

See also *Hunt v. Monroe*, 32 Utah 428, 91 Pac. 269 (1907), wherein the court recognized that the award of support money and alimony was an award to

the wife, even though a decree directed payment to someone else, and that it was the wife who had the right to enforce the award.

## II

## THE CONSTITUTIONAL QUESTION RAISED BY APPELLANT IS JUSTICIABLE.

The appellee argues that not only is the appellant not a proper party, but there is not a sufficient nexus between the claim she asserts and the constitutional issue raised, and that therefore the action is non-justiciable. He also contends that the question is a "political question."

It seems difficult indeed to contend that there is no nexus between a party's claim for support money and a holding that she is not entitled to it because of a statute establishing the age of majority. Her entire right to the relief she claims is dependant upon the unconstitutionality of *15-2-1 Utah Code Annotated 1953*. If the statute is unconstitutional, she is entitled to the support money inasmuch as the common law is the general law of the State of Utah, *68-3-1 Utah Code Annotated 1953*, and at common law, both male and female children attain the age of majority at 21 years. *Jones v. Jones*, 72 F.2d 829, (D.C. Cir. 1934), and Annotation, "Age at which female attains majority," 95 A.L.R. 355.

If any more nexus is needed, it is found in Utah's Uniform Civil Liability for Support Act which places upon both parents an obligation to support their children, male and female, until they reach the age of 21 years. *Title 78, Chapter 45, Utah Code Annotated 1953.*



The "political question" argument is difficult to answer only because of its audacity. If this is a political question, what question of legislative classification is not? The present issue is far removed from what have generally been regarded as political questions. It is simply a case of a legislative classification which directly affects individual rights, among them the rights of the appellant to past-due support in this case.

## III

## THE RULING BELOW WAS NOT BASED ON NON-FEDERAL GROUNDS.

Even if the opinion of the Utah Supreme Court could be interpreted as deciding the case on the ground that a "political issue" was involved, it cannot be construed as deciding the question on a non-federal ground. The Utah Supreme Court did not rely on judicial restraint and refuse to decide the constitutional issue. It held that the statute was constitutional as against a direct attack based upon federal constitutional grounds. In its opinion the Utah Supreme Court said:

> The main issue presented on this appeal is plaintiff's attack on the constitutionality of Section 15-2-1 U.C.A. 1953:
>
> > The period of minority extends in males to the age of 21 years and females to that of 18 years, but all minors obtain their majority by marriage.
>
> She contends that making age of majority lower for women than for men is discriminatory, and denies equal protection of the laws. (Citing Utah Constitution, Article 1, Sections 7 and 24; Article 4, Section 1; and also U.S. Constitution, Amendment Fourteen.)

> * * * it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with the constitutional provisions that it should be stricken down as invalid.

The court also ruled that the plaintiff is entitled to accrued support money for her son "during his minority," i.e., until he reaches the age of 21 years.

## CONCLUSION

This was not a case in which the Utah Supreme Court declined to rule on the constitutionality of a Utah statute in the exercise of non-federal judicial restraint. The court held the statute to be constitutional, and not in violation of the Fourteenth Amendment.

The appellant here is not only a proper party, but is the only party having standing to bring this action. The constitutional issue is so closely related to her rights to obtain past-due support money that there is the needed nexus between the asserted rights and the constitutional issue.

As pointed out in the jurisdictional statement, there is a substantial federal question which should be decided by this court.

Respectfully submitted,

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.,
*Appellee.*

On Appeal from the Supreme Court
of the State of Utah

# BRIEF FOR THE APPELLANT

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IN THE

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*Appellee.*

---

On Appeal from the Supreme Court
of the State of Utah

---

# BRIEF FOR THE APPELLANT

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## OPINION BELOW

The opinion of the Supreme Court of the State of Utah (R. 75-76) is reported at 30 Utah 2d 315, 517 P.2d 1010.

## JURISDICTION

The judgment of the Supreme Court of the State of Utah was entered on January 4, 1974 (R. 75-76).

A petition for rehearing was denied on January 30, 1974 (R. 74). Notice of Appeal to the Supreme Court of the United States was filed on March 5, 1974 (R. 101), and docketed on April 1, 1974. Probable jurisdiction was noted on October 21, 1974. The jurisdiction of this court rests upon 28 U.S.C. §1257(2). See also 28 U.S.C. §2101(c) and Rules 11 and 13, Revised Rules of the Supreme Court of the United States.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following constitutional provisions and statutes:

Amendment XIV, Section 1, United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

15-2-1 Utah Code Annotated 1953 (Utah Code Replacement Volume 2A [1973], p. 475):

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years; but all minors attain their majority by marriage.



30-3-5 Utah Code Annotated 1953 (Utah Code Replacement Volume 3 [1969], p. 664):

> *Disposition of property and children.* — When a decree of divorce is made the court may make such orders in relation to the children, property and parties, and the maintenence of the parties and children, as may be equitable; provided, that if any of the children have attained the age of ten years and are of sound mind, such children shall have the privilege of selecting the parent to which they will attach themselves. Such subsequent changes or new orders may be made by the court with respect to the disposal of the children or the distribution of property as shall be reasonable and proper.

30-3-5 Uah Code Annotated 1953 as amended by Chapter 72, §3, Laws of Utah 1969 (Utah Code Replacement Volume 3, 1973 pocket supplement, p. 265):

> *Disposition of property and children.* — When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable. The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support and maintenance, or the distribution of the property as shall be reasonable and necessary.

Title 78, Chapter 45, Utah Code Annotated 1953 (Utah Code, Volume 9 [1953], 1973 pocket supplement, p. 93; Chapter 110, §§1-14, Laws of Utah 1957):

> 78-45-1. *Short title.* — This act may be cited as the Uniform Civil Liability For Support Act.
>
> 78-45-2. *Definitions.* — As used in this act:
> (1) "State" includes any state, territory or

possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(2) "Obligor" means any person owing a duty of support.

(3) "Obligee" means any person to whom a duty of support is owed.

(4) "Child" means a son or daughter under the age of twenty-one years, and a son or daughter of whatever age who is incapacitated from earning a living and without sufficient means.

(5) "Parent" includes either a natural parent or an adoptive parent.

78-45-3. *Duty of man.* — Every man shall support his wife and child.

78-45-4. *Duty of woman.* — Every woman shall support her child; and she shall support her husband when he is in need.

78-45-5. *Duty of obligor regardless of presence or residence of obligee.* — An obligor present or resident in this state has the duty of support as defined in this act regardless of the presence or residence of the obligee.

78-45-6. *District Court jurisdiction.* — The district court shall have jurisdiction of all proceedings brought under this act.

78-45-7. *Determination of amount of support.* — When determining the amount due for support, the court shall consider all relevant factors, including but not limited to:

(1) the standard of living and situation of the parties;

(2) the relative wealth and income of the parties;

(3) the ability of the obligor to earn;



(4) the ability of the obligee to earn;

(5) the need of the obligee;

(6) the age of the parties;

(7) the responsibility of the obligor for the support of others.

78-45-8. *Continuing jurisdiction.* — The court shall retain jurisdiction to modify or vacate the order of support where justice requires.

78-45-9. *Enforcement of right to support — Powers of state department of public welfare.* — The obligee may enforce his right of support against the obligor and the state department of public welfare may proceed on behalf of the obligee to enforce his right of support against the obligor. Whenever the statement department of public welfare furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing reimbursement and of obtaining continuing support. Whenever such action is commenced by the state department of public welfare, it shall be the duty of the county attorney, of the county of the residence of the obligee, to represent the state department of public welfare.

78-45-10. *Appeals.* — Appeals may be taken from orders and judgments under this act as in other civil actions.

78-45-11. *Husband and wife privileged communication inapplicable — Competency of spouses.* — Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this act. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage.

78-45-12. *Rights are in addition to those presently existing.* — The rights herein created are

in addition to and not in substitution of any other rights.

78-45-13. *Interpretation and construction.* — This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[Chapter 110, §13, Laws of Utah 1957, is a separability clause which has not been included as a separate code section.]

## QUESTIONS PRESENTED FOR REVIEW

The Utah Supreme Court construed 15-2-1 Utah Code Annotated 1953 so as to terminate divorce-decreed support for a daughter at the age of eighteen years, but to continue it for a son until the age of twenty-one years. The questions presented are:

1. Whether 15-2-1 Utah Code Annotated 1953 is invalid because in contravention of the due process and equal protection clauses of the fourteenth amendment.

2. Whether the divorced spouse to whom support money payments were to be made has standing to challenge the constitutionality of the statute.

3. If the statute is held to be invalid, whether support money payments for the daughter continue until she reaches the age of twenty-one years.

## STATEMENT

Thelma B. Stanton, plaintiff and appellant, and James Lawrence Stanton, Jr., defendant and appellee, were married on February 22, 1951 (R. 1) and divorced on November 29, 1960 (R. 10). The parties have a daughter and a son, Sherri and Rick (R. 12). The decree of divorce awarded care and custody of the two children to Mrs. Stanton (R. 10) and provided for their support as follows (R. 11):



> Defendant is ordered to pay to plaintiff the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support, and $100.00 per month as alimony, to be paid on or before the 1st day of each month through the office of the Salt Lake County Clerk.

Sherri's eighteenth birthday was on February 12, 1971 (R. 24), at which time Mr. Stanton discontinued payments for her support. Rick turned eighteen on January 29, 1973 (R. 24). Mr. Stanton continued his support payments except for a short period when Rick was living in his home (R. 48). On May 22, 1973, Mrs. Stanton moved the District Court of Salt Lake County for entry of judgment against Mr. Stanton in the amount of $3,000.00 representing $2,700.00 accrued support money for her daughter, and $300.00 accrued support money for her son (R. 43-45).

The trial court ruled that the rights of the parties were governed by 15-2-1 Utah Code Annotated 1953, which sets the age of majority at eighteen years for females and twenty-one years for males. In Conclusion of Law No. 1 of the Amended Findings of Fact and Conclusions of Law entered on June 13, 1973 (R. 48), the court said:

> On February 12, 1971, Sherri Lyn Stanton, one of the children of the parties, became eighteen years of age, and under the provisions of 15-2-1 Utah Code Annotated 1953, thereby

attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn since that date.

On that basis, the court denied Mrs. Stanton's motion for judgment (R. 50-51).

Mrs. Stanton appealed to the Utah Supreme Court, contending that the statute is invalid under the equal protection and due process clauses of Amendment XIV, United States Constitution. The Utah Supreme Court held the statute was properly construed and did not violate the United States Constiution. It affirmed the order insofar as it denied support for Sherri, but reversed insofar as the order denied a judgment for accrued support for Rick. It also held the son's support was to continue "during his minority unless otherwise properly determined and ordered by the District Court" (R. 74-76).

## SUMMARY OF ARGUMENT

The Utah "age of majority" statute contains a classification based solely on sex, and affects a fundamental right, i.e., a child's right to be fed, clothed, and sheltered, by her parents. No compelling state interest is involved. The statute cannot withstand any judicial scrutiny, "close" or otherwise. The classification has no substantial relationship to any ascertainable legislative objective.

In Utah, the obligation of a spouse to pay accrued child support under a divorce decree runs in favor of the other spouse. Mrs. Stanton, therefore, has standing to maintain this action and challenge the constitutionality of the statute.



The statute being unconstitutional, Mrs. Stanton is entitled to receive support until her daughter attains the age of twenty-one years. At common law, the age of majority for both males and females was twenty-one years, and if the statute is struck down, the common law applies. In any event, the benefit of the legislation should be extended to improperly excluded female children.

## ARGUMENT

### I.

***The statutory establishment of different ages of majority for males and females, solely on the basis of their sex, is prohibited by the Fourteenth Amendment to the United States Constitution.***

The decree of divorce (R. 11) was based upon a stipulation of the parties (R. 9), and neither the stipulation nor the decree specified the ages to which child support would continue. The divorce statute, 30-3-5 Utah Code Annotated 1953, provides for support and maintenance of "children," without reference to age or to minority. The Utah Uniform Liability for Support Act, 78-45-2 Utah Code Annotated 1953, defines "child" as "a son or daughter under the age of twenty-one years."

Nevertheless, the Utah courts held that the duty of a husband to pay child support to his wife terminates for a daughter at the age of eighteen years, and for a son at the age of twenty-one years. The decision was based upon the classification contained in 15-2-1 Utah Code Annotated 1953:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years; but all minors attain their majority by marriage.

Although legislative bodies are accorded a wide range of discretion in making statutory classifications, such discretion has its limits, and those limits vary with the legislative objectives, the interests involved, and the criteria upon which classifications are based.

The traditional, or "rational basis", test was articulated by the court in ***F. S. Royster Guano Company v. Virginia***, 253 U.S. 412, 415 (1920):

> It is unnecessary to say that the "equal protection of law" required by the 14th Amendment does not prevent the states from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this court established that they have a wide range of discretion in that regard. But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

The "rational basis" test occasionally has been applied in such a manner that a successful attack on statutory classifications was virtually impossible. In *McGowan v. Maryland*, 366 U.S. 420, 425-426 (1961) it was held that a statutory discrimination would not be set aside "if any stated facts reasonably may be conceived to justify it." And see *Safeway Stores, Inc. v. Oklahoma Retail Grocers Assofiation, Inc.*, 360 U.S. 334 (1959); *Kotch v. Board of River Port Pilot Commissioners*, 330 U.S. 552 (1947). The "rational basis" test as then applied was too permissive, and additional



restraint was necessary to afford mandated equal protection. Legislation was subjected to strict judicial scrutiny in those instances in which the classifications were based upon "suspect" criteria. In *Loving v. Virginia*, 388 U.S. 1, 11 (1967) and *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), race was found to be a suspect criterion. Other suspect criteria have included alienage, *Graham v. Richardson*, 403 U.S. 365, 372 (1971), national origin, *Korematsu v. United States*, 323 U.S. 214, 216 (1944), perhaps wealth, *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966).

Legislation has also been subject to close judicial scrutiny in those cases in which fundamental interests are involved. *Skinner v. Oklahoma*, 316 U.S. 535 (1942), *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), *Griffin v. Illinois*, 351 U.S. 12 (1956), *Shapiro v. Thompson*, 394 U.S. 618 (1969), if such fundamental rights are "explicitly or implicitly guaranteed by the constitution," *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 33 (1973).

The first attacks on legislative sex classifications met with little success. In *Muller v. Oregon*, 208 U.S. 412 (1908), the court upheld an Oregon law limiting females to a 10-hour working day; in *Breedlove v. Suttles*, 302 U.S. 277 (1937), the court upheld a poll tax statute which treated men and women differently, and in *Goesaert v. Cleary*, 335 U.S. 464 (1948), the court upheld a statute forbidding women to tend bar unless they were the wives or daughters of male owners.

In *Reed v. Reed*, 404 U.S. 71 (1971) the court for the first time invalidated a legislative classification

based on sex. The case involved the Idaho Probate Code, which set out the order in which persons are entitled to administer estates and provided that in cases of persons equally entitled, "males must be preferred to females, and relatives of the whole to those of the half blood." The statute was held to violate the equal protection clause despite the fact that the Idaho Supreme Court had seen the objective of the statute as elimination of one area of controversy to be resolved by the probate court; had viewed the classification as reasonable because of a legislative determination that men were better qualified to act as administrators; and had concluded that the choice of males over females was "neither an illogical or arbitrary method devised by the legislature to resolve an issue that would otherwise require a hearing as to the relative merits * * * of the two or more petitioning relatives * * *." *Reed v. Reed*, 93 Idaho 511, 465 P.2d 635, 638-639 (1970).

This court held that because the Idaho statute provided for different treatment of applicants on the basis of their sex, it established a classification "subject to scrutiny under the Equal Protection Clause" (404 U.S. at 75). The court considered the classifications in relation to the legislative objectives and reversed the Idaho Supreme Court, saying (404 U.S. at 76-77):

> Clearly the objective of reducing the work load on probate courts by eliminating one class of contests is not without some legitimacy. The crucial question, however, is whether §15-314 advances that objective in a manner consistent with the command of the equal protection clause. We hold that it does not. To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, it to make the very kind of arbitrary legislative choice forbidden by the equal protection clause of the 14th amendment; and whatever may be said as to the positive values of avoiding intrafamily controversy, the choice in this context may not be lawfully mandated solely on the basis of sex.



Although the court quoted the traditional test of *Royster Guano Company*, the approach was far different from those cases holding that a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it, or if the distinction underlying the classification is reasonably debatable. The Idaho statute may not have been subjected to "close judicial scrutiny", but it was certainly subjected to "scrutiny", and the burden of justifying the classification was placed on the state.

*Frontiero v. Richardson*, 411 U.S. 677 (1973), involved a federal statute under which a serviceman could claim his wife as a dependent whether or not she was dependent upon him at all, while a servicewoman could not claim her husband as a dependent unless he was in fact dependent upon her for over one-half of his support. The sex-based classification was held to be invalid.

Speaking for four members of the court, Mr. Justice Brennan said:

> Although the legislative history of the statute sheds virtually no light on the purposes underlying the differential treatment accorded male and female members, a majority of the three judge district court surmised that congress might reasonably have concluded that, since the husband in our society is generally the "breadwinner" in the family — and the wife typically

the "dependent" partner — "it would be more economical to require married female members claiming husbands to prove actual dependency than to extend the presumption of dependency to such members." 341 F. Supp. 207. Indeed, given the fact that approximately 99% of all members of the uniformed services are male, the District Court speculated that such differential treatment might conceivably lead to a "considerable saving of administrative expense and manpower." Ibid.

At the outset, appellants contend that classifications based upon sex, like classifications based upon race, alienage, and national origin, are inherently suspect and must therefore be subject to close judicial scrutiny. We agree and, indeed, find at least implicit support for such an approach in our unanimous decision only last Term in *Reed v. Reed*, 404 U.S. 71 (1971) (411 U.S. at 681-682).

* * *

Moreover, since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate "the basic concept of our system that legal burdens should bear some relationship to individual responsibility . . ." *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972). And what differentiates sex from such nonsuspect statuses as intelligence or physical disability, and aligns it with a recognized suspect criteria, is that the sex characteristic frequently bears no relation to ability to perform or contribute to society. As a result, statutory distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the



actual capabilities of its individual members. (411 U.S. at 686-687).

* * *

With these considerations in mind, we can only conclude that classifications based upon sex, like classifications based upon race, alienage, or national origin, are inherently suspect, and must therefore be subjected to strict judicial scrutiny. Applying the analysis mandated by that stricter standard of review, it is clear that the statutory scheme now before us is constitutionally invalid (411 U.S. at 688).

Although a majority of the court did not concur in this opinion, Mr. Justice Stewart did concur in the judgment on the ground that the statute worked "an invidious discrimination in violation of the constitution." Mr. Justice Powell, with whom the Chief Justice and Mr. Justice Blackmun joined, concurred on the ground that the case was governed by *Reed*, in which the court subjected a statute to "scrutiny under the equal protection clause." 404 U.S., at 75.

It has been suggested, with some justification, that the test applied by the court in *Reed* differs from both the traditional test and the strict scrutiny test, and that recent equal protection cases have sought to "blur the distinctions between strict and minimal scrutiny precedents by formulating an overreaching inquiry applicable to 'all' equal protection cases." Gunther, *The Supreme Court* 1971 *Term — Foreword*: *In Search of Evolving Doctrine on a Changing Court*: *A Model for a Newer Equal Protection*, 86 Harv. L. R. 1, 17 (1972). Professor Gunther finds a new test under which legislative classifications would be examined in terms of a statutory purpose having "substantial basis

in actuality, not merely in conjecture" and would define that purpose exclusively by reference to materials physically presented to the court. Cf. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972), and *Police Department v. Mosley*, 408 U.S. 92 (1972).

Lower federal courts have interpreted the *Reed* decision as establishing a different test for validity of legislative classifications.

In *Wark v. Robbins*, 458 F.2d 1295, 1296 (1 Cir. 1972), the court commented on the varying tests of constitutionality of legislation as follows:

> * * * [W]e have been presented with the wide-ranging choice of standard of review which landmark cases in this fluid area suggest: the conventional, relaxed view customary in reviewing economic regulations, McGowan v. Maryland, 366 U.S. 420, 81 S. Ct. 1101, 6 L.Ed.2d 393 (1960); the more rigorous review, calling for a justification of a suspect classification through proof of a compelling reason therefor, *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L.Ed. 2d 1010 (1967); or something in between. * * *
>
> (Note 4) This intermediate approach is suggested by *Reed v. Reed* * * * On the one hand it is noteworthy that the Court has moved away from its readiness to conceive any reasonable basis for differentiating the sexes as demonstrated in *Hoyt v. Florida*, 368 U.S. 57, 82 S.Ct. 159, 7 L.Ed.2d 1118 (1961) [upholding a Florida statute relieving women from involuntary jury service], but on the other hand it is equally apparent that the court had ample opportunity to hold sex a "suspect classification" but did not do so. These observations, particularly in a case involving such a substantial interest as that of appellant being subjected to an



> escape penalty free of extraneous sex-based considerations, would argue for a requirement that the state must do more than allow a court to speculate and must in fact demonstrate a substantial relation to a legitimate state objective. * * *"

*Grain v. Waterford Board of Education*, 473 F.2d 629 (2 Cir. 1973) involved the validity of a requirement that maternity leave of female teachers be taken "not less than four months prior to expected confinement or such earlier time as a replacement becomes available." The court said (473 F.2d, at 633):

> In several cases from its past Term, however, the Court has suggested that rational basis scrutiny is not so deferential a standard of review as had been previously and generally supposed. First, the Court has apparently narrowed the linguistic gap between the two standards; it has avoided the terminology of two-tiered review in some cases, by posing instead certain fundamental inquiries applicable to "all" equal protection claims. * * *
>
> Moreover, the court seems far less willing to speculate as to what unexpressed legitimate state purpose may be rationally furthered by a challenged statutory classification. [Citations omitted.]
>
> Finally, and perhaps most significantly, the court's definition of what constitutes the necessary rational relationship between a classification and a legitimate governmental interest seems to have become slightly, but perceptibly, more rigorous. While under McGowan v. Maryland, *supra*. [366 U.S. 425, 426], a classification is to be sustained unless it is "wholly irrelevant" to some permissible purpose, cases from the past Term spoke differently.

After an extensive analysis of the provisions of the regulation, and of the justifications advanced for it, the court held the classification to be invalid.

See also *Heath v. Westerville Board of Education*, 345 F. Supp. 501 (S.D. Ohio 1972) and *Eslinger v. Thomas*, 476 F.2d 225, 231 (4 Cir. 1973).

Whatever the standard of review, its application depends upon some analysis of the Utah statutes relating to children, their rights, and their disabilities.

Under the Utah statute, persons are classified as adults or minors by their ages, but the ages are different for the two sexes. Eighteen year old females are adults, but eighteen to twenty-one year old males are minors.

In determining whether the classification is reasonable, not arbitrary, and resting upon a ground of difference having a fair and substantial relation to the objective of the legislation, a starting point is ascertainment of the objective of the legislation. As in many cases, unfortunately, the objective of this legislation must be hypothesized. Utah did not publish legislative committee reports or debates, and the house and senate journals offer no enlightenment. Relevant legislative history is not available.

The forerunner of 15-2-1 Utah Code Annotated 1953 appeared as §1035, Compiled Laws of Utah, 1876, prior to statehood. The statute was substantially similar.

At the time of enactment of the original statute (on February 6, 1852, according to a note in C.L.U. 1876) there were many correlative rights and duties between parent and child which depended upon whether



the child was an infant or an adult. At common law parents had rights to custody and control of their minor children, and duties of protection, support, and care. They could choose what education and religious training the children were to have, could enforce discipline, and were entitled to the earnings and services of the children.

It may be presumed that in 1852 the territorial legislature was attempting to fix an age at which persons would be admitted to full citizenship and permitted to participate generally in the affairs of the society. The statute was enacted only seven years after the first settlers had arrived. Utah was a polygamous, frontier society, and there may then have seemed good reasons for establishing a different age of majority for males and females, e.g., to encourage the early marriage of female children.

Today Utah has many statutes fixing the ages at which children can perform acts, are subject to disabilities, and can participate in the government.

The right of citizens of Utah to vote and hold office may not be denied or abridged on account of sex, and "both male and female citizens, shall enjoy equally all civil, political and religious rights and privileges." [1] Long prior to the Twenty-sixth Amendment all citizens over the age of twenty-one had a right to vote.[2]

Persons of both sexes over the age of twenty-one are competent to act as jurors.[3] At the age of twenty-

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1 Utah Constitution, Article IV, §1
2 Utah Constitution, Article IV, §2
3 78-46-8 Utah Code Annotated 1953.

one years persons of either sex may be admitted to the practice of law.[4] The age at which persons may serve as legislative, executive, and judicial officers is the same for males and females.[5] Persons of the age of twenty-one years or more may incorporate businesses.[6] Tobacco may not be sold, purchased, or possessed by persons of either sex under the age of nineteen years.[7] Licenses for the operation of motor vehicles are issued to persons of either sex at the same ages under the same circumstances.[8] Adult education programs are open to every person eighteen years of age or over.[9] The Uniform Gift To Minors Act defines a minor as a person "who has not attained the age of twenty-one years."[10] Children under eighteen years of age are subject to the jurisdiction of juvenile courts. [11] Persons may dispose of their property by will if over the age of eighteen years.[12] Parents must support their sons and daughters under the age of twenty-one years.[13] And public assistance is provided for "children under the age of 21".[14]

The "age of majority" statute does have legal effect on a number of rights. Minors may disaffirm

4 78-51-10 Utah Code Annotated 1953.

5 Utah Constitution, Article VI, §5, Article VII, §3, and Article VIII, §2; 10-6-6 Utah Code Annotated 1953; 17-5-2 Utah Code Annotated 1953.

6 16-10-48 Utah Code Annotated 1953.

7 76-42-4 and 76-42-5 Utah Code Annotated 1953.

8 41-2-10 Utah Code Annotated 1953.

9 53-30-5 Utah Code Annotated 1953.

10 75-15-2(11) Utah Code Annotated 1953.

11 55-10-64 and 55-10-77 Utah Code Annotated 1953.

12 74-1-1 Utah Code Annotated 1953.

13 78-45-2 to 78-45-4 Utah Code Annotated 1953, printed in brief at pp. 3-4, supra.

14 55-15a-17 Utah Code Annotated 1953.



their contracts.[15] Minors involved in court proceedings must appear either by a general guardian or guardian ad litem.[16] Parents have a right of action for injury to, or wrongful death of, minors.[17] The statute of limitations is tolled during the period of minority.[18] Minors may not act as executors[19] or as administrators.[20] Minors may not purchase alcoholic beverages.[21] And parties in divorce proceedings are required to make payments for the support of their children only during the childrens' minority.[22]

If it ever had, the age of majority statute no longer has as its purpose the establishment of adulthood with all its rights, privileges, and duties. It is a convenient means by which invidious sex discriminations can be incorporated into other statutes by reference.

The Utah Supreme Court in this case viewed the purpose of the statute as "formulating the policy of the law as to when the duty to support children should terminate." (Jurisdictional statement, Appendix C, p. 9a). But the legislature has enacted a general policy that parents have a duty to support their children until the children reach the age of twenty-one years, and beyond that if they are incapable of supporting themselves. See Utah Uniform Civil Liability For

15 15-2-2 Utah Code Annotated 1953.

16 Rule 17(b), Utah Rules of Civil Procedure.

17 78-11-6 Utah Code Annotated 1953.

18 78-2-36 Utah Code Annotated 1953.

18 78-12-36 Utah Code Annotated 1953.

20 75-5-4 Utah Code Annotated 1953.

21 32-7-15 Utah Code Annotated 1953, as amended by Chapter 83, §25. Laws of Utah 1969. Before the 1969 amendment, the age was fixed at twenty-one.

22 Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974).

Support Act, set out in full, *supra,* at pages 3 through 6. It is a general state policy to provide public assistance to needy persons under the age of twenty-one years,[23] and when it does, to require the parents to reimburse it for such aid.[24]

The statute does *not* establish a policy as to when the duties to support children should terminate. It establishes a policy that relates only to divorce proceedings and to when a parent in those proceedings may enforce a child support obligation in favor of a daughter. In *Reed*, the Idaho Supreme Court had sought to justify sex discrimination on the ground that it would prevent intrafamily squabbles. The Utah statute would promote them. When custody of children is awarded to a mother, the children become part of her household. She has a duty to feed, clothe, shelter, and educate them. The relationships and duties continue after the daughter turns eighteen, and a mother without independent means is faced with a serious problem. She can turn the daughter out, make her seek employment, or ask her to sue her father.[25] This is not likely to enhance parent-daughter relationships. It is difficult to conceive any fair and substantial relationship between the legislative classification and any legislative objective. The classification seems to *be* the objective.

The Utah Supreme Court found the classification a reasonable one, apparently on the basis of "old notions" that "continue to prevail": that it is "the man's primary responsibility to provide a home and its essen-

23 55-15a-17 Utah Code Annotated 1953.

24 78-45-9 Utah Code Annotated 1953.

25 Under the Uniform Civil Liability for Support Act, the child is the "obligee". Only the obligee and the state department of welfare may enforce the parent's obligation to support.



tials for the family and that it is a 'salutary thing for him to get a good education and/or training before he undertakes those responsibilities,' " and that "girls tend generally to mature physically, emotionally and mentally before boys, and that they generally tend to marry earlier." It may be a salutary thing for a man to have an education, but it is just as salutary for a woman to have one. If maturity is a legitimate test, the statute is overbroad in inclusion of all men and all women in separate classes. For purposes of voting, driving automobiles, making wills, receiving gifts, buying tobacco, holding public office, incorporating businesses, practicing law, or acting as jurors, one is as mature as the other. But females are more mature than males when it comes to contracting, bringing suit, administering estates, and receiving support.

The Utah statute on the age of majority is an anachronism. As of early 1972 only seven states fixed the age of majority for females at eighteen years and males at twenty-one years: Arkansas, Idaho, Nevada, North Dakota, Oklahoma, South Dakota, and Utah. See Kanowitz, *Sex Roles in Law and Society* (1973), p. 175. Since that time the statutes have been amended to equalize the age of majority in Idaho,[26] Nevada,[27] North Dakota,[28] Oklahoma,[29] and South Dakota.[30] Utah and Arkansas are now the only states with differing ages of majority for males and females.[31]

26 Idaho Code Annotated (1963), §32-101.

27 Nevada Revised Statutes (1963), §129-010.

28 North Dakota Cnt. Code (1960), §14-10-01.

29 Oklahoma Statutes Ann., Title 15, §13.

30 South Dakota Comp. Laws Ann., §26-1-1.

31 15-2-1 Utah Code Annotated 1953 and Arkansas Statutes Annotated, §57-103.

Other courts have invalidated age-sex classifications. In *Harrigfeld v. District Court*, 95 Idaho 540, 511 P.2d 822 (1973), the Idaho Supreme Court considered the constitutionality of a statute fixing the ages of majority for females at eighteen and for males at twenty-one, like the one being challenged here. The case involved the right to bring an action or wrongful death, the defendant contending that the wife and child of a deceased minor could not sue because actions for the wrongful deaths of minors had to be brought by a parent or guardian. The court said (511 P.2d at 825, 826):

> We agree with the plaintiffs that the former Idaho minority statute, which provided different ages of majority for men and women, constituted a violation of the equal protection clause of the 14th amendment.
>
> • • •
>
> One of the areas which has been subjected to increasing legislative and judicial scrutiny has been that of age-sex discrimination. Statutes which treat persons of the same age differently, solely on the basis of sex, have been found to violate the equal protection clause of the Constitution. • • •
>
> • • •
>
> Petitioner suggests that Idaho's former minority statute was based on a legislative determination that females of eighteen possessed as much "discretion" as males of twenty-one and therefore were fitted to attain majority at an earlier age. A minority law providing that the age of majority for males was twenty-one and for females, eighteen, was first enacted by the Legislative Assembly of the Territory of Idaho in 1864. S.L. 1864, pp. 515-16. The same sex-



> age differential in regard to the age of majority persisted unchanged in Idaho's laws until 1972.
>
> "[T]he mores and practices of a society that has traditionally encouraged males and discouraged females from [active participation in business and public affairs] cannot be ignored. Against that social background, a legislative determination that females achieve 'discretion' earlier than males • • • is not merely a matter about which reasonable people may differ, but stands out as an arbitrary and unreasonable classification prohibited by the equal protection clause of the United States Constitution." Kanowitz, Constitutional Aspects of Sex-Based Discrimination in American Law, 48 Neb.L.Rev. 131, 159 (1968).

In *Lamb v. Brown*, 456 F.2d 18 (10 Cir. 1972) Danny Ray Lamb had been tried as an adult, and had been convicted in the Oklahoma State courts for burglary of an automobile — a felony. He brought a habeas corpus proceeding contending that the Oklahoma statute under which he was tried was unconstitutional because it permitted the benefit of juvenile court proceedings for females under the age of eighteen years, while limiting those same benefits to males under the age of sixteen years. In *Lamb v. State*, 475 P.2d 829 (Okl. 1970) the Oklahoma Supreme Court had upheld the statute stating that it exemplified the legislative judgment of the Oklahoma State Legislature, "premised upon the demonstrated facts of life." Although the United States Court of Appeals for the Tenth Circuit was "strongly disinclined" to hold the considered judgment of the Oklahoma legislature invalid under the federal constitutional standards, it was compelled to do so. The court said (456 F.2d at 20):

Lamb v. State, *supra*, is not helpful in our search for a rational justification for the disparity and treatment between 16-18 year old males and 16-18 year old females under the statute. "Demonstrated facts of life" could mean many things. The "demonstrated facts" which the court relied upon are not spelled out. They are not obvious or apparent. We therefore cannot weigh them to determine if they "might suffice to characterize the classification as reasonable rather than arbitrary and invidious". McLaughlin v. Florida, *supra*, 379 U.S. at 191, 85 Supreme Court at 288.

We have not been presented with a logical constitutional justification for the discrimination inherent in 10 Okl.St.Ann. §1101(a). The state in its brief and oral argument has simply relied upon the unexplained "demonstrated facts of life". Because the purpose of the disparity in the age classification between 16-18 year old males and 16-18 year old females has not been demonstrated, we hold that 10 Okla.St.Ann. §1101(a) is violative of the equal protection clause. * * *

See also *In the matter of Patricia A.*, 31 N.Y. 2d 83, 335 N.Y.S. 2d 33 (1972) in which a similar statute was successfully challenged by a seventeen year old female.

Recent studies make it clear that the old notions about differences between the sexes are only notions. Research shows that most of the personality traits usually associated with a particular sex are culturally, not biologically, determined. See John Money, "Developmental Differentiation of Femininity and Masculinity Compared," in *Potential of Women*, McGraw Hill, 1923, pp. 51-65; Robert J. Stoller, *Sex and Gender*, New York, Science House, 1968, pp. viii-ix; *Biology*



*and Behavior*, ed. David C. Glass, New York, Rockefeller University and the Russell Sage Foundation, 1968.

Sex discrimination in the Utah statute cannot be justified by genetic differences. The old notions should be overcome by a holding that sex is a suspect criterion for purposes of legislative classifications.

Moreover, the interests involved here are ones that could not be completely takes away by any legislature. The relationships between parent and child have been so much a part of the culture for so long a time that they must be held to be implicitly guaranteed by the due process clause, not by the equal protection clause alone, and are therefore fundamental interests as defined in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 33 (1973).

In any event, the genetic studies go further than supporting the view that sex classifications are subpect, they also show that the Utah classification is unreasonable, arbitrary and invidious, and that it bears no fair and substantial relation to the object of the legislation.

The statistics relied upon by the court to uphold a sex-based classification in *Kahn v. Shevin*, 40 L.Ed 2d 189 (U.S. 1974), would require that the classification in Utah's statute be struck down. A longer period of support and education might well reduce the disparity in employment opportunities and earnings between men and women.

## II

*Appellant has standing to raise the constitutional issue.*

Although Mrs. Stanton is not a member of either class described in the challenged legislation, i.e., males and females between the ages of eighteen and twenty-one, her rights are directly affected by the classification.

In Utah divorce proceedings the only parties are the two spouses. Awards are made for the support and maintenance of the children, but the awards run to one spouse or the other. The decree in this case ordered the defendant "to pay to the plaintiff" $100 per month for each child as child support (R. 11).

Mrs. Stanton is more than a stakeholder. In *Anderson v. Anderson*, 110 Utah 300, 172 P.2d 132, 135 (1946), the Utah Supreme Court said:

> Alimony relates to the support of the divorced wife, and support money relates to compensation to a spouse for the support of minor children.

In the ordinary case, the right to past-due support money is the spouse's right, not the child's. In *Larsen v. Larsen*, 5 Utah 2d 224, 300 P.2d 596, 598 (1956), an action for past-due support, the Utah Supreme Court said:

> If the child has been the beneficiary of equivalent support and education so that the mother is entitled to receive all of said past due support money, she should be free to release, compromise, or waive that which is hers.

There was no issue in this case as to whether Mrs. Stanton had supported Sherri during the period in



question. Her answers to interrogatories show that she had (R. 55).

Mrs. Stanton thus has "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S., 186, 204 (1962). See also, *Flast v. Cohen*, 392 U.S. 83, 99 (1968); and *Eisenstadt v. Baird*, 405 U.S. 438, 446 (1972).

## III

*A daughter's right to support continues until she attains the age of twenty-one years.*

As in many cases of legislative classification, this question arises: If the statute is invalidated, is the one class to be given the benefits previously granted to the other, or are the benefits to be denied to both classes?

If the Utah statute is invalidated, there will be no legislation fixing the age of majority, in which case the court should apply the common law rule.

> The common law of England so far as it is not repugnant to, or in conflict with, the Constiution or laws of the United States, or the Constitution or laws of this state, and so far only as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people hereof, is hereby adopted, and shall be the rule of decision in all courts of this state. (68-3-1 Utah Code Annotated 1953)

At common law, the age of majority was twenty-one years for both males and females. See, Annota-

tion, "Age at which female attains majority," 95 A.L.R. 355; and *Jones v. Jones*, 72 F.2d 829, 830 (D.C. Cir. 1934).

In any event, a holding that a statutory classification is unconstitutional does not require a denial of benefits to both classes. The benefit of the statute should be extended to the excluded class. See *Levy v. Louisiana*, 391 U.S. 68 (1968), and *Moritz v. Commissioner of Internal Revenue*, 469 F.2d 466, 470 (10 Cir. 1972).

Extending the benefits to daughters would not offend Utah legislative policy, or be repugnant to the constitution or laws of Utah. The general Utah policy, except for divorce proceedings, is for parents to support their sons and daughters until they reach the age of twenty-one years. Utah Uniform Civil Liability for Support Act, Title 78, Chapter 45, Utah Code Annotated 1953.

## CONCLUSION

The Utah age of majority statute invidiously discriminates between males and females. There is no fair and substantial relationship between the objective (or objectives) of the legislation and the sex-based classifications contained in it. A number of rights and relationships are affected by the statute, in various ways and under various circumstances. The total statutory scheme with respect to the age-sex classifications is unreasonable, arbitrary, and illogical.

As applied to divorce proceedings, the statute operates to deprive one spouse of the right to support for



an eighteen year old daughter, while giving another, similarly situated, the right to support for an eighteen to twenty-one year old son.

The statute is unconstitutional under the equal protection and due process clauses of the fourteenth amendment.

The judgment of the Supreme Court of the State of Utah should be reversed and the case remanded for entry of judgment in favor of Mrs. Stanton for $2,700 past due support money, and for a determination of the amount of costs and attorneys fees, if any, to be awarded to her for bringing and pursuing this action.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
*Appellant,*

v.

JAMES LAWRENCE STANTON, JR.
*Appellee.*

On Appeal from the Supreme Court of the
State of Utah

## BRIEF FOR THE APPELLEE

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JAMES LAWRENCE STANTON, JR.
*Appellee.*

On Appeal from the Supreme Court of State of Utah

## BRIEF FOR THE APPELLEE

## STATEMENT OF THE CASE

This appeal arises from a divorce action between appellant and appellee. Pursuant to stipulation of the parties a Decree of Divorce was entered November 29, 1960. The Stipulation and the Decree *inter alia* granted appellant custody of the minor children Sherri Lyn and Rick and ordered appellee to pay appellant $100.00 per month for each child (A. 1, 3-6).

Section 15-2-1, Utah Code Annotated (1953) provides that single women achieve their majority at age eighteen, and men at twenty-one. Thus, when Sherri turned eighteen

on February 12, 1971 appellee discontinued Sherri's support payments. On May 13, 1973 appellant moved the trial court for a judgment against appellee in the amount of $3,000.00 representing alleged delinquencies in support payments for the use of Sherri from February 12, 1971.

The trial court denied appellant's motion, citing §15-2-1. (A. 23). From this ruling, appeal was taken to the Utah Supreme Court, based upon the theory that the statute contravened the Equal Protection and Due Process Clauses of the United States Constitution.

When the State Supreme Court affirmed the trial court's decision, Mrs. Stanton appealed to this court.

## SUMMARY OF ARGUMENT

There are several reasons why appellee believes this appeal should be dismissed. On a procedural level appellee believes that the facts show that appellant lacks standing and that the issue is moot.

Appellant lacks standing because she is not a member of the age group affected by the statute and because in her individual capacity as a trustee or fiduciary she lacks the personal stake in the outcome required by this court. Furthermore, since appellant stipulated that support payments should be paid only to her children, she waived her right to now assert that payments should continue after Sherri achieved majority.

The issue is moot because neither Sherri nor appellant is now a member of the eighteen to twenty-one age group.



On a substantive level appellee contends that this court should apply the "rational basis" test; and that the statutory scheme under attack here does have a rational basis.

Finally, even if it is held that the statute is unconstitutional, appellee believes that this court should remedy any inequality by expanding the coverage of the statute to allow men to be treated as adults at age eighteen rather than by withholding the privileges of adulthood from women until they reach twenty-one.

## POINT I.

## APPELLANT LACKS STANDING TO ATTACK THE CONSTITUTIONALITY OF SECTION 15-2-1, UTAH CODE ANNOTATED (1953)

It is a well established rule of this court that only individuals whose interests have been prejudiced or who will suffer direct substantial injury as a result of application of a statute may attack its constitutionality *Barrows vs. Jackson,* 346 U.S. 249, 97 L.Ed. 1586, 1595 (1952). Similarly, it has been stated that where a legislative enactment is being attacked, a logical link between the status of the challenger and the statutory scheme must be established *Flast vs. Cohen,* 392 U.S. 83, 102, 20 L.Ed.2d 947, 963 (1968).

On its face the statute under attack purports to grant the privileges of majority to women eighteen years of age and older while withholding such benefits from men until they reach twenty-one.

Even though appellant is not an individual whose age falls in the eighteen to twenty-one age group, she nonetheless claims standing to attack the statute based upon the well

recognized right of a mother to bring an action against a father for delinquencies in support payments. It is, however, clear that the wife's interest is at best derivitive and indirect. Her position has been analogized to that of a fiduciary with respect to the amount paid, H. Clark, *The Law of Domestic Relations in the United States* (1968) p. 494; to a guardian who must use the payments for the child's benefit, *id.* at 490; and to a trustee *Rosenblat vs. Birnbaum,* 245 N.Y.S.2d 71, 75 (1963), *affd.* 264 N.Y.S.2d 521, 212 N.E.2d 37 (1965); *Harper vs. Ballensinger,* 177 S.E.2d 693, 698 (Ga. 1970); *Grace vs. Quigg,* 276 N.E.2d 594, 598 (Ind. 1971); *Nelson on Divorce and Annulment,* §14.90 (2nd ed. 1961).

As to a wife's interest in child support payments it has been stated:

> [A] wife, awarded the custody of the children, has no proprietary rights in the amounts ordered to be paid by the husband for their support, and the money paid under the decree can be used only for the benefit of the children. 27B C.J.S. *Divorce* § 321(2)

That the wife has no interest in child support payments can be seen in the Internal Revenue Code which exempts such payments from the wife's income, Int. Rev. Code of 1954, § 71(b), and in various Utah cases where it has been stated that even by stipulation of the wife the husband may not reduce such payments. *French vs. Johnson,* 16 Utah 2d 360, 401 P.2d 315 (1965); *Larsen vs. Larsen,* 5 Utah 2d 224, 300 P.2d 596 (1956).

If appellant has no interest in the payments, her only "personal stake in the outcome of the controversy" *(Baker vs. Carr,* 369 U.S. 186, 204 (1962)) must be the right to bring an action against the husband for recovery of the amounts payable for the child's benefit.



In attempting to determine whether a party has a sufficient interest in a dispute to have standing to attack a legislative-enactment, this court has laid down the following rule:

> The 'gist of the question of standing' is whether the the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *Flast, supra,* at 961, quoting *Baker, supra,* at 204.

In this case it is clear that appellant lacks such a personal stake in the outcome. At issue here is the constitutionality of a statute which bestows the rights of majority on certain individuals. In her Brief appellant acknowledges a raft of benefits to those who are acknowledged as adults under the law. See Brief of Appellant at pp. 20-21. Appellant also acknowledges that a determination that § 15-2-1 is unconstitutional may lead to a raising of the minimum age to twenty-one rather than a lowering to age eighteen. In fact, appellant urges that in the event the statute is voided, the age of twenty-one be adopted as the age of majority. *Id.* at 29, 30.

Thus it appears that appellant's interest, real or imagined, is inimical to the very class (i.e., women eighteen to twenty-one) whose interest she claims to represent. It is thus difficult to understand how appellant can assert such a "personal stake in the outcome as to assure concrete adverseness." *Baker vs. Carr, supra.*

Indeed, appellant is not herself discriminated against, if at all, on the basis of her sex. A male under like circumstances would be treated no differently than she. At best, there is a distinction drawn in § 15-2-1 between males and

females of a certain age group (eighteen to twenty-one) to which she does not belong. If appellant's daughter felt that she was the victim of invidious discrimination, having obtained her majority she could bring an action in her own name. Rule 17(b), Utah Rules of Civil Procedure.

Furthermore, any discrimination in support payments to eighteen-, nineteen-, and twenty-year-old women engendered by § 15-2-1 is eliminated by Utah's Uniform Civil Liability for Support Act, §§ 78-45-1, et seq., Utah Code Annotated (1953, Supp. 1973).

The pertinent provisions of the Act are as follows:

78-45-2. Definitions. — As used in this act:

* * *

(2) 'Obligor' means any person owing a duty of support.

(3) 'Obligee' means any person to whom a duty of support is owed.

(4) 'Child' means a son or daughter under the age of twenty-one years and a son or daughter of whatever age who is incapacitated from earning a living and without sufficient means.

* * *

78-45-3. Duty of a man. — Every man shall support his wife and his child.

78-45-4. Duty of a woman. — Every woman shall support her child; . . .

* * *

78-45-9. Enforcement of right to support — Powers of state department of public welfare. — The obligee may enforce his right of support against the obligor and the state department of public welfare may proceed on behalf of the obligee to enforce his right of support against the obligor. . . .



Under the Utah statutory scheme both males and females in the eighteen to twenty-one age group have a right to support. Thus, even if it could be said that appellant had standing to represent her daughter's interest in attacking a statute which discriminated between men and women of different ages, there is no such discrimination under the Utah statutory scheme.

Finally, even if appellant otherwise has standing to attack the statute because it has the effect of preventing her from suing her ex-husband for amounts which allegedly accrued after her daughter became eighteen, she is estopped from now seeking such sums.

For over one hundred years it has been clear under Utah law that the word "child" when used in the context of support payments refers to girls eighteen and under. Thus, when appellant and appellee stipulated on November 29, 1960 that appellee should pay an agreed amount to appellant as support for the children it was clear that support payments for Sherri were only to continue until she reached the age of eighteen.

As a result of the stipulation the trial court ordered that appellee pay "$100.00 per month for each child." Thus, by the very agreement which established appellee's obligation for support payments, appellant voluntarily relinquished any right she had to enforce such payments to her after Sherri reached her majority.

This court has long recognized the doctrine of equitable estoppel. In *Dickerson vs. Colgrove,* 100 U.S. 578, 580, 25 L.Ed. 618 (1879) the doctrine was explained in the following words:

> [H]e who by his language or conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted.

See also, *Kirk vs. Hamilton,* 102 U.S. 68, 26 L.Ed. 79 (1880); *Casey vs. Galli,* 94 U.S. 673, 24 L.Ed. 168 (1877).

In the instant case appellant agreed by stipulation to accept on behalf of her daughter the sum of $100.00 per month as child support. She thereby impliedly gave up any right to collect support owed to her daughter once she reached adulthood at age eighteen. In reliance upon this agreement appellee has greatly altered his financial position by using the money which would otherwise have been used as support payments for other purposes. In addition, appellant did not begin this action until more than two years after Sherri reached the age of eighteen. Such forebearance clearly constituted conduct which appellee could reasonably view as further affirmation of the validity of the stipulation as it related to child support.

Application of the doctrine of estoppel in this case must lead to the conclusion stated above, viz., that appellant is without standing. Appellant has no immediate interest in the effect of § 15-2-1 for she is not in the eighteen to twenty-one age group affected. She is only affected by the statute with regard to her right to sue her husband for unpaid support payments; but her interest in them is only that of a trustee or fiduciary. She thus lacks the personal stake in an attack on the constitutionality of the statute necessary to insure concrete adverseness. In any case, by virtue of the stipulation which she signed on November 29, 1960, appellant waived her right (but not her daughter's) to bring an action for unpaid support after Sherri became an adult.



## POINT II.
## THE ISSUE RAISED BY APPELLANT IS NOW MOOT

It is well established that the federal judiciary cannot review cases which are moot, since article III of the United States Constitution requires the existence of a "case of controversy". *Liner vs. Jafco, Inc.,* 375 U.S. 301, 306 (1964); *Powell vs. McCormack,* 395 U.S. 486, 496 (1969): This court has stated:

> [F]ederal courts are without power to decide questions that cannot affect the rights of the litigants . . . before them. *North Carolina vs. Rice,* 404 U.S. 244, 246 (1971)

In the instant case appellant attacks § 15-2-1 on the grounds that it unfairly discriminates between men and women in the eighteen to twenty-one age group. But as to appellant and her daughter this question is clearly moot.

Appellant herself is much older than twenty-one. Her daughter, Sherri, whose interest appellant appears to wish to represent is similarly over the age of twenty-one (Sherri became twenty-one on February 12, 1974).

Thus, even if appellant has standing to represent her daughter's interest, neither she nor her daughter possess rights which can be affected by the outcome of this proceeding. The issue is, therefore, moot.

## POINT III.
## THIS COURT SHOULD APPLY THE RATIONAL BASIS TEST

In equal protection cases this court has adopted a two-tiered approach. Where legislation has appeared to impinge upon a "fundamental right or to be based upon 'suspect'

criteria," it has been subjected to strict judicial scrutiny. See, for example, *Bolling vs. Sharpe,* 347 U.S. 497 (1954); *Korematsu vs. United States,* 323 U.S. 214 (1944). In such cases the burden has been placed upon the state to demonstrate that the challenged legislation serves a compelling state interest.

In all other cases the court applies the "rational basis" test which requires only that

> the classification must be reasonable, not arbitrary, and must rest upon same ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *F. S. Royster Guano Co. vs. Virginia,* 253 U.S. 412, 415 (1920)

Under this test the individual attacking the statute has the burden of proving "that it does not rest upon any reasonable basis, but is essentially arbitrary." *Lindsley vs. Natural Carbonic Gas Co.,* 220 U.S. 61, 79, 55 L.Ed. 369, 377 (1911).

Until recently it was clear that the "rational basis" test was applicable in cases of alleged sex-based discrimination. *Goessaert vs. Cleary,* 335 U.S. 464 (1948); *Muller vs. Oregon,* 208 U.S. 412 (1908). Appellant contends, however, that in two fairly recent cases this court has adopted the strict scrutiny test, or something very similar to it, in sex discrimination cases.

In *Reed vs. Reed,* 404 U.S. 71, 30 L.Ed.2d 225 (1971) the court was asked to consider the constitutionality of an Idaho statute which provided that as between individuals equally qualified to act as estate administrators, men must be preferred to women. In defining the issue thus presented the court stated:



> The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bars a *rational relationship* to a state objective that is sought to be advanced by the operation of . . . [the Idaho statute]. 404 U.S. at 76 [Emphasis added].

The language of the above quotation certainly supports the assumption that some form of the rational basis test was used. Appellant, however, contends that the decision sets forth a kind of hybrid test calling for greater judicial scrutiny. As support for this proposition appellant points to the court's statement that a statutory scheme treating individuals differently on the basis of sex is "subject to scrutiny. . . ." *Id.* at 75. This view overlooks the fact that the court obviously was aware of the significance of the expression "strict scrutiny", choosing instead to speak only of "scrutiny." Furthermore, since the decision contains no mention of "compelling state interests" or of the burden of proving the same, it is reasonable to assume that this test was not applied.

In *Reed* the court struck down the Idaho statute on the grounds that it gave mandatory preference to males merely to accomplish the elimination of a hearing on the merits to determine qualification. Thus, according to the court, even though the object of reducing the workload on probate courts may be legitimate, this means could not be accomplished by eliminating females from consideration through "arbitrary legislative choice . . ." *Id.* at 76. *Reed* therefore appears to add to the rational basis test the caveat that while a statutory scheme may logically further some legitimate legislative object, the means adopted has no rational constitutional basis if the unequal treatment is an arbitrary preference based

solely upon sex. In effect, *Reed* retains the rational basis test, but eliminates administrative convenience as an acceptable "rational basis" in sex discrimination cases. As will be seen, administrative convenience is not advanced as reason for the statute here under attack.

A second case cited by appellant as supporting its theory that strict scrutiny should be applied here is *Frontiero vs. Richardson,* 411 U.S. 677 (1973). There the court struck down a United States statute which allowed servicemen to claim their wives as dependents for certain benefits, but a servicewoman could claim her husband only if she paid over one-half his support. No clear rule emerges from the decision. Justice Brennan writing for four members of the court applied the strict scrutiny test. Justice Powell's concurring opinion in which Justice Blackmun and the Chief Justice joined applied the rational basis test. Justice Stewart concurred in the judgment but did not indicate what test should be applied. Justice Rehnquist in dissent agreed with the District Court decision which applied the rational basis test.

At the outset it must be recognized that *Frontiero* provides little precedence as to the applicable test. This court has stated that lack of agreement by a majority of the court on principles of law prevents a decision "from being authoritative determination for others cases." *United States vs. Pink,* 315 U.S. 203, 216 (1941). See also, 20 Am. Jur. 2d *Courts* § 195.

In any case the differing views are probably more a matter of semantics than expressions of philosophical differences. The government's explanation for the statute was identical to that advanced in *Reed,* viz.: administrative efficiency. 411 U.S. at 681, 682. Justice Brennan's decision, in the context of this particular case, may simply stand for the proposition that where administrative convenience is advanced as the sole reason for adopting a particular statute, the proponent must sustain the burden required by the strict scrutiny test. *Id.* at 688, 690. This view is consistent with the court's statement in *Shapiro vs. Thompson,* 394 U.S. 618, 633 (1969) that "[t]he saving of welfare costs cannot justify an otherwise invidious classification."



Justice Stewart's concurring opinion is based, in part, upon *Reed.* As noted above, *Reed* simply eliminates administrative convenience as an acceptable explanation under the rational basis test. Presumably, however, a statute may still be sustainable, even where its underlying policy is administrative convenience, if the state bears the burden of demonstrating a compelling interest which cannot be achieved by less drastic means. Thus the two views are not necessarily contradictory.

Furthermore, in two subsequent cases in which the question has been raised, this court has refused to apply the strict scrutiny test in upholding statutes which utilized sex-based discrimination.

In *Kahn vs. Shevin,* ..... U.S. ....., 94 S.Ct. 1734 (1974) the court sustained a Florida statute which allowed a $500.00 property tax exemption to widows, but no exemption to widowers. The majority opinion stated that the statute rested "'upon some ground of difference having a fair and substantial relation to the object of the legislation.'" 94 S.Ct. at 1737 citing *Reed, supra.* It further noted that the state tax was *"reasonably designed* to further the state policy . . ." *Id.* [Emphasis added].

In *Geduldig vs. Aiello,* ..... U.S. ....., 94 S.Ct. 2485 (1974) a California statute was upheld which prohibited payment of state medical insurance benefits for expenses arising from normal pregnancies. The majority opinion stated that such a statutory scheme was "rationally supportable." 94 S.Ct. at 2491. Although the decision does not specifically refer to the rational basis test, it is manifest that this is the test which was used. The dissenting opinion makes this particularly clear.

If, as appellant contends, the court in *Reed* and *Frontiero* laid down a rule of stricter scrutiny than employed in traditional rational basis test, it is equally true that this test was abandoned in *Kahn* and *Geduldig.* In both of these decisions *Reed* and *Frontiero* were distinguished by the majority on grounds applicable to the instant case.

In *Kahn,* for example, the majority opinion noted that *Reed* and *Frontiero* were distinguishable because in those cases the proponent attempted to justify the statutory scheme as being *"solely* for administrative convenience." 94 S.Ct. at 1737 (emphasis added by the court). As in *Kahn,* in the instant case administrative convenience is not a reason for adoption of the statute. On the contrary, administrative procedure would be greatly simplified by a standardization of the age of majority.

In *Geduldig* the majority opinion distinguished *Reed* and *Frontiero* on the fact that the statutory scheme was based upon pregnancy rather than gender *per se.* 94 S.Ct. 2492 n. 20. The court pointed to the presence of women in both the excluded and included classes as evidence of the non sex-based nature of the discrimination. *Id.* (By contrast, in *Reed* under the Idaho statute no woman could be appointed as



administratrix where she was in competition with a male; and in *Frontiero* no woman who provided less than half her husband's support could receive dependent's benefits.)

The instant case is more nearly similar to the facts in *Geduldig.* The Utah statute is based primarily upon two characteristics: age and marital status. Within the age distinction is a sex-based subgrouping. As to appellant the sex-based distinction has no direct application since a male similarly situated would have identical rights to those of appellant. Moreover, of the two classes created by the statute — minors and adults — males and females may be found in both. Similarly, since minority is ended by marriage under the statute, in the eighteen to twenty-one age group there may be both male and female adults. These facts indicate that sex is a secondary consideration under the statute, unlike the statutory schemes in *Reed* and *Frontiero.*

From the foregoing it is clear that the rational basis test of *Kahn* and *Geduldig* should be applied.

It should be further noted that a majority of federal courts have utilized some form of the rational basis test in sex-based discrimination cases. Among recent court of appeal decisions see, for example, the following: ***Miskunas vs. Union Carbide Corp.,*** 399 F.2d 847 (7th Cir. 1968); ***Robinson vs. Board of Regents of Eastern Kentucky University,*** 475 F.2d 707 (6th Cir. 1973); ***Morris vs. Michigan State Board of Education,*** 472 F.2d 1207 (6th Cir. 1973); ***Gruenwald vs. Gardner,*** 390 F.2d 591 (2nd Cir. 1968); ***Lamb vs. Brown,*** 456 F.2d 18 (10th Cir. 1972); ***Eslinger vs. Thomas,*** 476 F.2d 225 (4th Cir. 1972); ***Schattman vs. Texas Employment Commission,*** 459 F.2d 32 (5th Cir. 1972); ***Paiewonsky vs. Paiewonsky,*** 446 F.2d 178 (3rd Cir. 1971).

## POINT IV.

## THERE IS A RATIONAL BASIS TO THE DISTINCTION DRAWN BY SECTION 15-2-1

As noted above, the rational basis test requires that

> the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Royster Guano Co., supra.*

The starting point in any equal protection case must therefore be an inquiry as to the object of the legislation. As to § 15-2-1, it is clear that the underlying legislative objective is to establish an objectively identifiable point in time when a member of society is given the responsibilities and benefits of adulthood. The mean chosen to establish this object was to adopt a statute setting forth the prerequisite to emancipation: marriage, or the attainment of a particular age.

In order for the legislature to set this standard it was necessary to make a determination as to what segments of society were most capable of coping with the rights and responsibilities of adulthood. The Utah legislature decided that married individuals, single men over twenty-one, and single women over eighteen belonged to the groups best suited for emancipation.

Unfortunately, any determination as to the age of adulthood, whether in Utah or in any other state, is not one easily supportable by empirical means; rather it is one based upon human experience. Indeed, this determination was one which the legislative branch, rather than the judiciary was best suited to make.



In *Baker vs. Carr,* 369 U.S. 186 (1962) this court examined the doctrine of nonjusticiability where political questions were concerned. The decision provides the following lists of factual situations involving political questions:

> . . . a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. 369 U.S. at 217.

As defined above the setting of the age of majority is clearly a political question. There are, for example, no "judicially discoverable and manageable standards" for resolving the question of when a person is an adult. Similarly, any determination that a particular age should be adopted, or that the present distinction is without rational basis requires a "determination of a kind clearly for nonjudicial discretion."

The Utah Supreme Court recognized the political nature of the issue posed when it stated:

> We think this case and the proposal under consideration provides a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature. 517 P.2d 1010, 1013.

If the policy determination of the legislature is accepted (i.e., that young married individuals are better suited for

adulthood than singles, or that eighteen-year-old girls are better suited than boys of similar age), the Utah statute clearly meets the requirements of the rational basis test. The adopting of a majority statute has a fair and substantial relation to the object of emancipating worthy infants. Similarly, the legislature has emancipated all individuals who it has determined are equally situated as to qualification for emancipation.

Several facts may be adduced which support the above determination. For example, appellee requests this court to take judicial notice of the fact that women mature physically at an earlier age than men. The legislature may have also concluded that women mature emotionally at an earlier age.

The legislature may have felt that women should be emancipated earlier than men because they finish their education at an earlier age. Statistics published by the United States Department of Health, Education and Welfare indicate that a higher proportion of men are enrolled in college than women and a much higher proportion of men than women are in graduate school.

The 1972 study shows that 33,462 male Utah residents were enrolled in undergraduate courses; while only 26,151 women were similarly enrolled. On the graduate level there were 5,507 males and 2,287 females. National Center for Education Statistics, *Fall Enrollment in Higher Education 1972*, 52, 53 (1972).

It has also been established that women marry earlier than men. See United States Department of Commerce, *Statistical Abstract of the United States 1974*, 68 (1974).



Finally, a large number of young male members of the Church of Jesus Christ of Latter-day Saints (often called the Mormon Church) leave their homes at age nineteen or twenty to serve in missions in other parts of the country or in foreign lands. (The parties' son Rick is currently serving such a mission.) An unpublished report of the Church's missionary department indicates that at the beginning of 1973 there were over 5,000 such young men from Utah proselyting in Church missions. There were also about 700 Utah women, all of whom are older than twenty-one. All of these missionaries are supported through private donations of friends and family members.

In view of such facts the legislature may have felt that women were better able to seek support payments directly from their fathers without the aid of their mothers (because less likely to be in school or on a mission). Or it may have been felt that women of the eighteen to twenty age group was more physically and emotionally mature.

Whatever the reason,

> Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them. *McDonald vs. Board of Election Committee of Chicago*, 394 U.S. 802, 809, 22 L.Ed.2d 739, 745 (1969).

In this case there are ample grounds to justify § 15-2-1. The legislature should therefore be presumed to have acted constitutionally.

## POINT V.

## IF THE COURT HOLDS THAT THE STATUTE IS UNCONSTITUTIONAL, IT SHOULD SET THE AGE OF MAJORITY IN MALES AND FEMALES AT EIGHTEEN.

In Point III. of its Brief appellant contends that invalidation of § 15-2-1 can only lead to reversion to the common law age of majority: twenty-one. This statement clearly implies that this court's only recourse is to eliminate a statutory classification, rather than extending benefits to all individuals similarly situated. This is not the case.

In *Skinner vs. Oklahoma,* 316 U.S. 535 (1941) the court struck down a statute which required sterilization of certain classes of criminals. Since one basis of the decision was that the state could not justify the distinction between classes of criminals, the state apparently urged the court to extend coverage of the act to all classes. The court noted that such an extension was within its province, but declined to do so on the ground that enlargement or contraction would not necessarily solve the "constitutional difficulty." 316 U.S. at 543.

The ability of the court to expand or contract was further noted in *Welsh vs. United States,* 398 U.S. 333 (1969) where Justice Harlan in his concurring opinion stated:

> Where a statute is defective because of underinclusion there exists two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion. *Id.* at 361.



It is ironic that the statute under attack here largely has the effect of providing benefits to women at an earlier age than men. Yet it is a woman in the capacity of a fiduciary to her daughter who is attacking the enactment. In its Brief appellant notes that the statute benefits eighteen-, nineteen-, and twenty-year-old women by allowing them to enter into contracts, bring suit, and administer estates, at an earlier age than males (p. 23). (To this list may be added the fact that the statute allows women to buy liquor at an earlier age. Section 32-7-15, Utah Code Annotated (1953, Supp. 1973)).

At the same time appellant urges elimination of these rights by complete invalidation of the statute (p. 29, 30).

A more rational approach would be to extend the above benefits to males eighteen years of age and older. Indeed, federal and state legislatures have made it clear that they feel age requirements for rights closely associated with majority should be lowered. See, for example, the 26th Amendment to the United States Constitution which lowered the minimum voting age to eighteen; the Selective Service Act, 50 U.S.C. §§ 451, et seq. which establishes that every male of eighteen years and older has a military service obligation; § 74-1-1, Utah Code Annotated (1953) giving eighteen-year-olds the legal ability to write wills; §§ 41-2-1, et seq. which makes drivers eighteen years and older solely responsible for their acts of negligence and removes restrictions on procurement of driver's license after that age; §§ 55-10-63, et seq. which establishes jurisdiction of the juvenile court over those younger than eighteen; and § 76-10-103 which prohibits sale of tobacco to persons under nineteen years of age. Viewing such facts the Utah Supreme Court in its decision in this case stated:

> Assume that we take judicial cognizance of the trend in the differing role of women, perhaps we should similarly notice the trend toward the earlier emancipation and fuller freedom of conduct of minors; and that this applies to both boys and girls. One indication of this is the recent reduction of the age for voting to 18. *Stanton vs. Stanton,* 30 Utah 2d 315, 319, 517 P.2d 1010 (1974).

In several recent sex-based discrimination cases courts chose to extend benefits to an excluded class, rather than deny benefits to the benefited class. In *Harrigfeld vs. District Court of Seventh Judicial District,* 511 P.2d 822 (Idaho 1973), a statutory scheme almost identical to that under present consideration was held to violate the Fourteenth Amendment. There, however, the state adopted the position taken by appellant here: namely, that the statute must fall entirely and the common law age of majority (twenty-one) be applied. 511 P.2d at 827. The court rejected this argument, opting instead for a setting of the age of majority at eighteen. In so doing it cited recent adoption in Idaho of the Uniform Probate Code which established the earlier age of minority for both men and women. *Id.*

In *Moritz vs. Commissioner of Internal Revenue,* 469 F.2d 466 (10th Cir. 1972) the court declared that a statutory scheme violated equal protection which allowed a tax deduction to single women for support of an invalid parent, but allowed no similar deduction for a single man. Rather than voiding the statute, however, the court extended the deduction to single males. 469 F.2d at 470. In so doing the court noted the disruption which would have been caused by invalidating the entire section. *Id.,* n. 5.

Similarly, in *People vs. Ellis,* 10 Ill.App.3d 216, 293 N.E.2d 189 (1973), and *Lamb vs. Brown, supra,* courts held



that statutes setting a different age limit for men and women subject to the jurisdiction of juvenile courts violated the Equal Protection Clause. However, the courts chose to extend the benefits of juvenile court supervision to the excluded class rather than completely invalidating the statuory scheme or reducing the age limit to that of the excluded class. See also, *In the Matter of Patricia A.,* 31 N.Y.2d 83, 335 N.Y.S.2d 33 (1972).

The instant statute provides an excellent example of an enactment, the benefits of which should be expanded, not contracted. The legislature and the state Supreme Court have indicated a preference for lowering the age of majority in males rather than raising it for females. (See the discussion above.) The benefits of majority are considerable and should be extended to as many members of society as possible. And perhaps most importantly, to completely invalidate the statute would work hardship upon many divorced fathers, who in good faith have relied upon the § 15-2-1 in halting support payments to their wives when a daughter reached age eighteen. To reach a different decision would be to invite the disruption warned against in *Moritz, supra.*

Admittedly, an equalizing of the age of majority will not please appellant. However, appellee submits that in determining whether to expand, constrict, or completely destroy the statutory scheme, the court's attention should be focused on the class of individuals at whom the legislation is directed. This class is clearly young people approaching adulthood. The legislation is not aimed at appellant. Her interest is at best derivitive.

Thus, the inquiry should be whether the best interests of eighteen-, nineteen-, and twenty-year-olds are served by

excluding them from the benefits of adulthood or extending these benefits to them. Since §§ 78-45-1, et seq. guarantees these individuals a right of support to age twenty-one, it is difficult to conceive of any reasons why this court should not choose to set the age of majority at eighteen.

## CONCLUSION

Based upon the foregoing, appellee, James Lawrence Stanton, Jr., respectfully requests that this appeal be dismissed because of appellant's lack of standing and because the issue raised is now moot.

Quite apart from such procedural deficiencies, however, appellee submits that the statutory scheme under attack here meets the requirements of the court's "rational basis" test, and indeed of the modified "strict scrutiny" test suggested by appellant.

In any case, even if the statute were held to be unconstitutional, this court should lower the age of majority in men rather than voiding the entire statute, thereby raising the age of majority for women to twenty-one.

Respectfully submitted,

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